

No. 12886

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United States  
Court of Appeals  
for the Ninth Circuit.

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CITIZENS NATIONAL TRUST & SAVINGS  
BANK OF LOS ANGELES, Appellant,  
vs.

J. B. LONDONO, DULIEN STEEL PRODUCTS,  
INC., OF CALIFORNIA and DULIEN  
STEEL PRODUCTS, INC., Appellees.

And

DULIEN STEEL PRODUCTS OF CALIFOR-  
NIA and DULIEN STEEL PRODUCTS,  
INC., Appellants,  
vs.

J. B. LONDONO and CITIZENS NATIONAL  
TRUST & SAVINGS BANK OF LOS  
ANGELES, Appellees.

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Transcript of Record  
In Eight Volumes

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Volume II  
(Pages 501 to 942)

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

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(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Mr. Londono, how much wire in all did you ship to South America?

Mr. Diether: I object to that as already having been asked and answered.

The Court: I had understood that, although that was not included in my question. He was just asking how much he shipped. Objection overruled.

The Witness: 1,051 tons.

The Court: Where did the other 200 tons go, or the 199 tons? You said you shipped 200 tons of galvanized and 1,050 tons of rusty wire.

The Witness: Your Honor, I told you I shipped 1,000 tons——

The Court: 1,050 tons.

The Witness: 1,050 tons. 200 tons of it was galvanized, and 800 of it black.

The Court: Oh, I misunderstood you.

Mr. Dasteel: I have the same record here.

Mr. Diether: I do, too.

The Court: In other words, your total was 1,050 tons?

The Witness: 1,051 tons.

The Court: Of which 200 was galvanized?

The Witness: More or less.

The Court: You mean it was more or less galvanized?

The Witness: 20 per cent more or less. I can't say exactly how many coils galvanized, and it was not segregated. It was my calculations and my observations.

(Testimony of J. B. Londono.)

Mr. Diether: What did you say? That was your calculation?

The Witness: Yes. It was not segregated. It was my observation and my calculations.

Mr. Hubert Morrow: I understand that approximately 200 [395] tons of it was galvanized and 851 tons of it black?

The Witness: Yes.

\* \* \*

Q. (By Mr. Bunn): Mr. Londono, did you ever willingly accept any of this wire?

Mr. Diether: That is objected to.

Mr. John Morrow: That is objected to.

Mr. Diether: That is one of the questions to be decided by this court.

The Court: Objection sustained. That calls for a reasoning process.

Mr. Bunn: Of course, "accept" calls for a reasoning process.

Mr. Dasteel: And "willingly."

Q. (By Mr. Bunn): All right. Did you ever accept any of this wire?

Mr. Diether: That is objected to, your Honor please. The evidence will show that. It is calling for the conclusion of the witness. His own acts and conduct will show what he [396] did with respect to the wire.

The Court: Sustained.

Mr. John Morrow: The same objection.

The Court: Sustained.

(Testimony of J. B. Londono.)

Q. (By Mr. Bunn): Mr. Londono, why did you exercise dominion over any of this wire?

Mr. Diether: That is objected to, if your Honor please. "Why" calls for a conclusion. His own acts and conduct will show.

The Court: It calls for a conclusion and it has been asked and answered. He testified this morning he did these things to mitigate his damages.

\* \* \*

Q. (By Mr. Bunn): All right. Mr. Londono, when you delivered the letter of credit to Mr. Grinstein on Saturday, July——

The Court: Letter of credit?

Mr. Bunn: Yes, sir; the letter of credit. [397]

The Court: Oh, yes. All right.

Q. (By Mr. Bunn): When you delivered the letter of credit to Mr. Grinstein on July 27th, did Mr. Grinstein read it? A. Yes.

Q. In your presence?

A. Yes, I saw him read it; at least, he looked into the letter of credit in front of me.

Q. In addition to writings, did you on July the 26th or July the 27th verbally tell Mr. Schroeder to have Mattoon make the shipments for you?

A. Yes.

Mr. Diether: That——

Mr. Bunn: That is not the same question I asked earlier this morning. I thought you would think it was.

Q. (By Mr. Bunn): When you signed the note

(Testimony of J. B. Londono.)

for \$54,535 to the bank on July 31st, did you then have any question in your mind about the bank having received a bill of lading?

Mr. Diether: That is objected to as incompetent, irrelevant and immaterial. It doesn't make any difference whether he did or he did not. At that particular time we had already advanced the money for a loan to him of \$54,535, and he already had the documents.

Mr. Bunn: Had what documents?

Mr. Diether: The documents. [398]

Mr. Bunn: You mean the letter of credit?

Mr. Diether: The letter of credit, yes.

The Court: The objection is overruled. Answer the question.

Mr. Dasteel: We join in the objection, your Honor.

Mr. Diether: May I have the question again, please?

Mr. Hubert Morrow: Will you read the question?

(The question was read by the reporter.)

The Witness: No.

Mr. Diether: Your Honor please, may I add to my objection?

The Court: Yes.

Mr. Diether: The man had already received consideration for the note, because we had already advanced it to him, made a loan to him, in order that he might purchase a letter of credit for \$214,000, and his note had nothing whatsoever to do with



(Testimony of J. B. Londono.)

whether or not we had complied with the letter of credit or anything in connection with that transaction. The note was a separate transaction entirely, namely, a loan.

The Court: He was just fixing the time.

Mr. Diether: No. As I understand it, he is trying to establish some facts with relation to the cancellation of this note.

Mr. Bunn: I will be glad to tell you what I am trying to do. [399]

Mr. Diether: Let's hear it.

Mr. Bunn: I am trying to show this so that later you will not say that Mr. Londono with full knowledge still went in and signed a note for \$54,000. I want you to know if he had any question in his mind.

The Court: The objection is overruled. The question has been answered.

Mr. Diether: His answer was "No"?

The Court: His answer was "No."

I would like to ask a question on that, so everybody can get set to make an objection.

Mr. Hubert Morrow: What chances do we have of having it sustained, your Honor?

The Court: I don't know. If it is good, I will sustain it. I don't recall the particular date here at the moment when he said he went down and talked to Mr. Grinstein and he called Mr. Stanley in.

Mr. Diether: September the 4th.

The Court: September 4th, 1946.

Prior to September 4th, 1946, did you at any time

(Testimony of J. B. Londono.)

know that the bank had not received any bill of lading?

The Witness: No.

The Court: I am saying September 4th because I think that might be the date, but there were several days in there. [400]

The Witness: Not as a fact, but I thought—— (through interpreter) I thought or supposed when Mr. Koppel——

The Court: Let me fix another date here. "August 24th I asked Mr. Sweeney if he had any document." So I will reframe my question, and strike the question and the answer. Did you prior to August 24th know——

The Witness: No, sir.

The Court: ——that the bank had not received any bill of lading?

The Witness: No, your Honor.

Mr. Diether: Of course, that assumes a fact not in evidence, your Honor. It has not been proven yet the bank didn't receive a bill of lading.

The Court: It has been testified to, that they have not.

Mr. Dasteel: That was his understanding, your Honor please.

Mr. Diether: That is what somebody told him.

Mr. Dasteel: He may have believed it, although it may not have been a fact.

The Court: All right. Did you at all times from and after July 28th——

Mr. Diether: That is Sunday your Honor.

(Testimony of J. B. Londono.)

The Court: I know it is.

Mr. Diether: Oh, sorry. [401]

The Court: Or, let me say: Did you at all times on July 29th and after until August 24th believe that the bank had received the bill of lading, as called for in your application for letter of credit?

The Witness: Yes.

Mr. Hubert Morrow: Just a moment. Was there an answer to the former question?

Mr. Diether: Those were stricken.

The Court: I struck them.

Mr. Hubert Morrow: You struck them. Thank you.

Q. (By Mr. Bunn): Did you yourself participate in the agreement with Gonzalez & Blanco for the pickling of 25 tons of wire? A. Yes.

Q. Did you make the arrangements with them? A. Yes.

Q. Why did you do that?

Mr. Diether: Mr. Bunn, that is subject to the agreement of September 10th.

Mr. Bunn: All right. I will withdraw it.

Q. (By Mr. Bunn): For what purpose did you do that?

Mr. Diether: Just a moment. That is objected to.

The Court: You withdrew the question. For what purpose did you do that?

The Witness: In order to know the quality, the inside [402] of the wire.

Q. (By Mr. Bunn): In order to what?

(Testimony of J. B. Londono.)

A. In order to know the real quality, to clean the wire and see how it is usable or not.

Mr. Diether: Will you read that last answer, please?

(The answer was read by the reporter.)

Mr. Diether: May we have the date of that understanding?

Mr. Bunn: I will now, in order to comply with Mr. Diether's request, ask for a stipulation which I understood this morning he would enter into, that on the date of September 27, 1946, in writing with Gonzalez & Blanco the agreement was made.

Mr. Diether: So stipulated.

The Court: You offer this in evidence?

Mr. Bunn: Yes, sir. I have shown it to these gentlemen.

The Court: Is it on the list?

Mr. Bunn: It is on the new list I am going to hand the clerk at noon. That has just been typed and brought to me this morning.

The Court: All right.

Mr. Bunn: Let me see what number it is on that new list.

The Court: The new list should begin with No. 38.

Mr. Bunn: Yes. I have a new secretary, too, and it [403] sometimes balls things up.

It is No. 39, dated September 27th.

Q. (By Mr. Bunn): I ask you, Mr. Londono, if that is your signature to that letter?



(Testimony of J. B. Londono.)

A. Yes, it is.

Q. And my signature? A. Yes, sir.

Q. And the signature of Gonzalez?

A. Yes. I saw him at the time.

Mr. Bunn: We offer that as Plaintiff's Exhibit 39. I have a copy of this, gentlemen, which I will hand you right now.

The Court: It will be admitted in evidence.

(The document referred to was marked Plaintiff's Exhibit 39, and was received in evidence.)

\* \* \*

Mr. Bunn: I ask for a stipulation on a letter from me bearing the same date, September 27th, to all parties defendant except the government, who wasn't then in the case, reporting on the execution of the one which has just been received.

The Court: What is that number?

Mr. Bunn: This should be "A" after the last number. [404]

Mr. Bunn: 39-A?

Mr. Bunn: Yes, 39-A, because it is a companion.

The Court: All right.

Mr. Bunn: Will you stipulate, gentlemen, that I wrote the original and that the letters were received by everybody but the government?

Mr. Diether: It was received by the bank.

Mr. Dasteel: So stipulated.

The Court: On or about the date it bears?

Mr. Bunn: Yes, your Honor.

Mr. John Morrow: So stipulated.

(Testimony of J. B. Londono.)

The Court: All right. 38-A in evidence.

Mr. Bunn: 39-A.

The Court: 39-A in evidence. I am sorry.

(The document referred to was marked Plaintiff's Exhibit 39-A, and was received in evidence.)

Mr. Bunn: Now, does that answer your question, Mr. Diether?

Mr. Diether: Yes. Thank you. Mr. Bunn, may we also have a stipulation that this agreement of September 27, 1946 relative to the pickling of the wire was all subject to the agreement of September 10th?

Mr. Bunn: Or was all in accordance with the general understanding set out in the letter of September 10th, that Londono would make every effort? [405]

The Court: All right. It seems to indicate on its face, as well as in the letter. [406]

\* \* \*

Friday, April 21, 1950—2:00 P.M.

The Court: Proceed.

J. B. LONDONO

the witness on the stand at the time of recess, being heretofore duly sworn, resumed the stand and testified further as follows:

Mr. Bunn: Now, if your Honor please, I have been handed by counsel for the bank the original \$54,535 note, which I now ask be substituted for

(Testimony of J. B. Londono.)

No. 22, the copy, which was marked yesterday and received, and ask that it include the bottom portion of the note form.

The Court: Admitted.

Mr. Bunn: On the left-hand side—no, I just ask it be included in the exhibit. Then there is attached to that original note or in the clerk's hands now a typewriting of all the payment information that has been put on that note since Mr. Londono signed the original note. Correct, Mr. Diether?

Mr. Diether: Correct.

Mr. Bunn: And which will be much more readily read by the court and counsel than will the note itself.

The Court: Let me see the original note.

Mr. Hubert Morrow: It is to become a part of Exhibit [407] 22?

Mr. Bunn: Yes, with the plaintiff asking permission to reserve its right to object to the allocation to interest of any of those payments therein shown and to offer evidence thereon, contrary to the allocations shown by the bank.

The Court: This will all go in. The other one was admitted as Exhibit 22. This probably better had go in as 22-A and 22-B.

The Clerk: The other is only marked for identification, as I understand it, Judge.

The Court: I have it here marked in evidence.

Mr. Bunn: I thought it was received in evidence.

The Clerk: When was that?

Mr. Diether: I think those are bank records and

(Testimony of J. B. Londono.)

the plaintiff ought to offer them or not.

The Court: 22 is marked in evidence.

Mr. Diether: That is what our records show was actually credited to principal and what was credited to interest.

Mr. Bunn: Well, I will not offer it and be bound by the bank's allocation of the interest. Then I will change the offer.

The Court: I think he is entitled to have it offered in the manner he is offering this, as a part of the bank's records.

Mr. Diether: We have no objection to that.

The Court: Pardon?

Mr. Bunn: Yes. We have set up now a contest on the question of the allocation of certain payments to interest.

The Court: As a part of the bank's records. I don't see how the plaintiff is bound by the allocations, with which he has had nothing to do, on the face of the document. Exhibit 22 was in evidence, wasn't it?

The Clerk: Yes.

The Court: This will be—the note will be 22-A, and the typewritten translation of the red English hieroglyphics on here will be 22-B.

Mr. Bunn: And, likewise, may I ask without prejudice to the plaintiff right to produce contrary evidence to any of the pencil notations on the bottom of that document?

The Court: You have that right. You are introducing the note, front and back?



(Testimony of J. B. Londono.)

Mr. Bunn: Under the statement that the court has made, yes.

Now, I ask that there be stipulated as to document No. 41 on the new list there——

The Court: The new list is what?

Mr. Bunn: I laid an additional sheet on your Honor's desk?

The Court: I see. All right.

Mr. Bunn: And counsel each have one—No. 41, —which [409] is a copy of a letter dated October 18th from Mr. Londono to the bank authorizing the release to Gonzalez and Blanco of \$1,000, pursuant of course, to that September 10th agreement.

The Court: You offer this in evidence?

Mr. Bunn: If Mr. Diether will stipulate that the copy may go in.

The Court: The stipulation which you request is that it was sent in the regular course of business on or about the date it bears?

Mr. Bunn: And was received by the bank.

The Court: The answer is "Yes"?

Mr. Diether: Oh, yes, your Honor.

The Court: In evidence, No. 41.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 41.)

Mr. Diether: That is October 18th, is it?

Mr. Bunn: That is October 19th.

The Court: Very well.

Mr. Bunn: I likewise ask that it be stipulated—

(Testimony of J. B. Londono.)

no, I offer the original agreement dated October 22, 1946, between Londono and Gonzalez and Blanco, a copy of which agreement has heretofore been furnished several years ago to each of my opponents. Now, if anyone has not a copy——

Mr. Laven: I haven't ever seen one. [410]

Mr. Bunn: You weren't any opponent then.

Mr. Laven: That is right.

Mr. Bunn: Oh, yes, you were, as Matson's lawyer.

Mr. Laven: I have never seen it.

Mr. Bunn: This is the agreement for the \$51 per ton. I am handing Mr. Laven a conformed copy of that agreement. Other counsel have one.

Mr. Diether: What number is that?

Mr. Bunn: That is No. 42.

The Court: It is admitted in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 42.)

Mr. Bunn: Now, attention is called to the fact that is signed by me as attorney in fact for Mr. Londono. If anyone wants me to, I can produce the original power of attorney. I take it it is not necessary.

Mr. Hubert Morrow: Not necessary so far as we are concerned.

Mr. Diether: We don't require it.

Mr. Bunn: Hearing no requirement for it, I shall not offer it.

(Testimony of J. B. Londono.)

I now offer No. 43, which is a copy of a letter from me, as Mr. Londono's counsel, dated November 29, 1946, to the bank, transmitting to the bank Gonzalez & Blanco's check for \$1,579.50, and reporting in the letter that that is the [411] payment under the agreement with Gonzalez & Blanco for what I have heretofore referred to as 25 tons of barbed wire sold them for pickling, which appears from this report to be 24.3 tons, as finally computed, and ask the copy be received, Mr. Diether, in lieu of your original, under the stipulation that it was duly received by the bank.

Mr. Diether: So stipulated.

The Court: You are offering this in evidence and requesting a stipulation from all parties it was sent on or about the date it bears to the parties to whom it was addressed?

Mr. Bunn: Yes, your Honor.

The Court: Dulien Steel Products, Matson, and the Citizens National Bank.

Mr. Hubert Morrow: We would like to see the letter before your ruling.

Mr. Bunn: This is November 29th, which is to the Citizens Bank.

The Court: This is October 29th. The one I have here, No. 43, is 10-29-46.

Mr. Bunn: I said October, and I meant November, and it is No. 45.

The Court: Oh, No. 45. All right. No. 45.

Mr. Hubert Morrow: No. 45.

The Court: No. 45, then, you offer in evidence

(Testimony of J. B. Londono.)

and request [412] a stipulation it was sent on or about the date it bears to the party to whom it is addressed, namely, Citizens National Trust and Savings Bank, in the regular course of business and was received by them?

Mr. Bunn: Yes, your Honor.

Mr. Diether: So stipulated.

Mr. Bunn: Now, what is the stipulation you want?

Mr. Diether: That you prepared that agreement.

Mr. Bunn: Yes, after conference with your attorney, Mr. O'Neil. It was prepared in my office, but pursuant to a conference and approval by the bank's then counsel, Mr. Frank O'Neil.

Mr. Diether: That is all I wanted.

Mr. Bunn: I will so stipulate.

Mr. Laven: The government cannot join in the stipulation.

The Court: No. 45 is received in evidence under the stipulation stated.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 45.)

The Court: You said you could not stipulate?

Mr. Laven: Well, we were not a party—the government was not a party to that, your Honor, to any arrangements between Mr. O'Neil and Mr. Bunn. I don't know what it was. [413]



(Testimony of J. B. Londono.)

Mr. Dasteel: We can't stipulate either, your Honor. It was in connection with payment on the note to the bank.

\* \* \*

The Court: I guess you will have to get Mr. O'Neil in here and have him testify.

\* \* \*

Mr. Hubert Morrow: We will stipulate it for Matson.

Mr. Laven: The government will stipulate as far as the letter being sent.

Mr. Dasteel: I will withdraw my objection and will so [414] stipulate.

Mr. Bunn: It is merely a transmittal of the check to the bank.

Mr. Diether: We are talking about the agreement.

Mr. Bunn: We are talking about the agreement instead of the letter. Well, the agreement was made pursuant to the letter of September 10th.

Mr. Laven: The agreement is the thing we can't stipulate to. [415]

\* \* \*

The Court: "In accordance with the contents of my said letter of September 27 to you, Dulien and Matson, this payment is without prejudice to any of the rights of any of the parties to the presently existing controversy involving the wire transaction."

So I can't see why the government can't stipulate and why counsel for the plaintiff should be put to the burden of bringing Mr. O'Neil in and say-

(Testimony of J. B. Londono.)

ing to him: Did we meet in our office on such-and-such a date and did we write this letter, and did we agree then?

Mr. Hubert Morrow: I am stipulating, without binding either Matson or the government.

\* \* \*

Mr. Laven: Under the circumstances that it is not binding on the government, I have no objection.

The Court: I don't know whether it is binding on the government or not.

Mr. Laven: There is a reservation there.

The Court: You still have your right to prove that they did not do everything they could in mitigation of the damages. If you want to, you can bring someone in here to testify that the wire was gold plated and worth \$1,000 a ton. [416] You can still do it.

\* \* \*

Mr. Laven: In view of the last paragraph, I have no objection.

\* \* \*

The Court: No. 45 is admitted in evidence, and the stipulation is approved.

Mr. Bunn: Now, it is apparent that I have failed to offer No. 43, which I now offer, and ask for a stipulation that the original of that letter, dated October 29th, addressed to Dulien, Matson, and the Bank was mailed in due course of business on or about the date it bears and duly received by each of them.

(Testimony of J. B. Londono.)

Mr. Laven: May I have an opportunity to read this letter, your Honor? [417]

The Court: Surely.

Mr. Bunn: The trouble, apparently, is that after Mr. Laven became attorney for the government, as distinguished from Matson, I wasn't specifically asked by him to resupply him in his new capacity with copies of all of these things that I had supplied to Matson when he was representing Matson.

Mr. Laven: We have no objection.

The Court: Do you join in the stipulation?

Mr. Laven: I join in the stipulation.

Mr. Diether: May I see it a moment, please? There is just one thing I want to check.

The Court: The stipulation is that it was sent on or about the date it bears in the regular course of business to the parties addressed and was received by them.

Mr. Hubert Morrow: Matson so stipulates.

Mr. Diether: So stipulated.

The Court: In evidence, No. 43.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 43.)

Mr. Bunn: Now, No. 47 is a letter dated—may I withhold that a moment, please? I have one that comes before that chronologically. That is No. 50, which is not on your list, but which I found at 11:30 last night and had overlooked. It is a letter from me, as attorney for J. B. [418] Londono, dated

(Testimony of J. B. Londono.)

September 7, 1946, to Dulien and the attention of Mr. Grinstein, the original of which letter Mr. Dasteel has told me in the recess he will stipulate was duly sent and received. I have the post office proof of it in this case, but it is simpler if he will stipulate. That is the letter urging an immediate conference. That was before the written agreement of September 10th. I will limit my offer to its being received against Dulien.

The Court: Only?

Mr. Bunn: Only, yes, your Honor. I can make proof of it, if necessary.

The Court: You are now requesting a stipulation from Mr. Dasteel that on or about the date the letter bears, to wit, September 7, 1946, it was sent in the regular course of business to Dulien Steel Products, Inc., in Los Angeles and received by them?

Mr. Bunn: Yes, your Honor.

Mr. Dasteel: So stipulated. We received it.

The Court: Very well.

Mr. Bunn: Will you go further, sir? And received by Dulien prior to the hour of the conference which was held on the 9th day of September, which was Admission Day?

Mr. Dasteel: I couldn't do that, because I don't know.

Mr. Bunn: All right. I will take the stipulation as [419] far as he gave it to me, then.

The Court: All right. In evidence, No. 50.

Mr. Diether: As to Dulien only.



(Testimony of J. B. Londono.)

The Court: As to Dulien only.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 50.)

Mr. Bunn: I offer and ask for a stipulation regarding No. 47, which is a letter, the original of which was a letter signed by me, dated March 15, 1947, directed to Dulien, Matson, and the Citizens Bank, and reporting on Mattoon's report of charges aggregating \$6,566.41.

Mr. Dasteel: May I suggest, Mr. Bunn, that in reporting these letters you refer to the name "Bunn" instead of to "me." It will be better for the record. Someone will not know who "me" is if they read the record later on.

Mr. Bunn: You are correct. Hereafter I will refer to myself impersonally, or, I will refer to Mr. Bunn impersonally.

May I have a stipulation that the original of that letter was mailed in due course on or about the date it bears and in due course thereafter received by each of you?

The Court: Referring to those to whom it was addressed?

Mr. Bunn: Dulien, Matson, and the Bank.

Mr. Diether: So stipulated. [420]

Mr. Dasteel: So stipulated.

Mr. Hubert Morrow: So stipulated.

Mr. Bunn: I offer that as Plaintiff's 47.

The Court: Admitted. No. 47 in evidence.

(Testimony of J. B. Londono.)

(The document referred to was received in evidence and marked Plaintiff's Exhibit No 47.)

Mr. Bunn: Now, No. 48, dated April 11, 1947, is a copy of a report from Gonzalez & Blanco on balance of \$4,579.54, therein admitted to be due and being paid by them to the bank. The report is unsigned, but the bank has the original, I believe because my notes indicate that.

Mr. Diether: No, I don't think we have that.

Mr. Bunn: Well, maybe that will settle it. And with it No. 49, an original letter dated May 24, 1947, to Mr. Londono's counsel, Bunn, by Mr. Leonard Ward, the attorney for Gonzalez & Blanco.

The Court: You are offering these two?

Mr. Bunn: I will offer the two together, then.

The Court: You offer them in evidence and ask for a stipulation?

Mr. Bunn: Yes, sir. I am offering them in evidence and asking for a stipulation.

The Court: That No. 48 is a copy of a report sent by Gonzalez & Blanco to whom?

Mr. Bunn: To the bank through me. [421]

\* \* \*

Mr. Diether: Are you offering this as binding on the bank as to the amount of wire that Gonzales and Blanco received [422] at the dock?

Mr. Bunn: I am not offering it for that, but I am offering it to show that the payment of \$4,579.54, for which you have a credit shown on your note,

(Testimony of J. B. Londono.)

was received with this report and how it was calculated.

Mr. Diether: There is no question but what the bank received the sum Mr. Bunn mentioned, but this purports to show the number of rolls and number of tons of wire Mr. Gonzalez received from Matson under bill of lading No. 29, and I have no knowledge of that, and I don't wish to be bound by it.

Mr. John Morrow: You are not offering this as against Matson?

Mr. Bunn: I am not offering it as against anybody. I want to have it admitted that it was the report made to me as Mr. Londono's attorney by Gonzalez & Blanco.

The Court: By Gonzalez & Blanco?

Mr. Bunn: Yes.

The Court: Showing the breakdown of the check of \$4,579.54?

Mr. Bunn: Yes, sir.

Mr. Diether: What materiality has it? We will stipulate that we received that amount of money from Gonzalez & Blanco through you, and to that extent only. We do not care to stipulate any further. [423]

The Court: No. 48 and No. 49 will be marked for identification. I suppose somebody will have Gonzalez & Blanco in here some day.

Mr. Bunn: Oh, yes, sir.

Mr. Hubert Morrow: There are two separate documents for identification?

(Testimony of J. B. Londono.)

The Court: Yes, for identification only, Nos. 48 and 49.

(The documents referred to were marked Plaintiff's Exhibits Nos. 48 and 49 for identification.)

Q. (By Mr. Bunn): Now, Mr. Londono, did you yourself make the payment of \$3,050 which is credited on the note to the bank under date of August 20, 1946?

Mr. Diether: We have already so stipulated. We have already so stated.

Q. (By Mr. Bunn): In what manner did you make that payment?

A. I paid by check \$3,050.

The Court: What is the date of that, and the amount?

Mr. Bunn: August 20, 1946.

The Witness: It was the day they received at the bank the documents, the shipping documents for 112 tons shipped to Cartagena, August 20th.

Q. (By Mr. Bunn): I call you attention to the fact that the credit on the note indicates 112.75 tons. That is [424] 112¾ tons? A. Yes.

The Court: What was your question? Did he pay that?

Mr. Bunn: I asked him how he paid it.

The Court: All right. And he paid it by check?

Mr. Bunn: Yes, by his check.

Q. (By Mr. Bunn): Now, did you thereafter, after that payment of \$3,050 yourself pay anything



(Testimony of J. B. Londono.)

further on this note other than by permitting the——

The Court: Well, did you pay any cash or check?

Q. (By Mr. Bunn): Did you pay by cash or check anything else on this note, yourself?

A. No.

Q. How were all the other payments made?

(The question was interpreted.)

A. The other payments by Gonzalez & Blanco through Mr. Thomas Bunn to the bank, I suppose, by check.

Q. Well, in other words, you didn't pay it?

A. No.

Q. They were the proceeds of the sales of wire, were they? A. Yes.

Q. Under the agreement of September 10th?

Mr. Diether: Yes, certainly, under the agreement of September 10th. [425]

Mr. Bunn: All right. Thank you, Mr. Diether.

Q. Mr. Londono, do you yourself know the dates upon which Dulien removed any wire from Pier A at Long Beach? A. No.

Q. Do you yourself know exactly how much wire Dulien removed from the pier? A. No.

The Court: Do you know whether or not Dulien removed any? Do you know whether or not Dulien removed any?

(Testimony of J. B. Londono.)

The Witness: No. [426]

\* \* \*

Mr. Dasteel: That was my objection.

Q. (By Mr. Bunn): Mr. Londono, do you know now where there is any of the 2,000 tons of wire that——

The Court: ——is the subject of this controversy?

The Witness: Yes. I know Mr. Bunn has four coils, 100-pound coils, of that wire.

Q. (By Mr. Bunn): And other than that you have none of it—you or your lawyer; is that right?

A. No.

Mr. Dasteel: May I have the last question read by the reporter?

(Question read by reporter.)

Mr. Bunn: That is plain, isn't it?

Mr. Dasteel: Too plain. I can't understand it.

Q. (By Mr. Bunn): Did you participate in the selection of those four rolls of wire that you say your attorney, Mr. Bunn, has, from the entire lot on the pier at Long Beach?

A. Not that I remember.

Mr. Bunn: Will you read that question to him, please?

(Question and answer read by reporter.)

Q. (By Mr. Bunn): Were you present when those four rolls were designated for removal from the dock? [427]

(Testimony of J. B. Londono.)

Mr. Dasteel: Just a moment, please. Your Honor, he has already answered the question, and didn't remember.

Mr. Diether: Didn't participate.

Mr. Dasteel: Didn't participate and didn't remember.

The Court: Objection overruled. He asked if he was present. You can be present at a riot or even at a murder without participating.

Q. (By Mr. Bunn): Do you understand the question?

A. Yes. All I remember is why I asked to Koppel to have four coils——(through interpreter) four coils that would represent the whole pile of the wire.

Mr. Diether: What was that last part?

(The answer was read.)

The Court: That is, the various conditions?

The Witness: Yes, your Honor.

Mr. Diether: Mr. Bunn, may we find out what day that was?

Q. (By Mr. Bunn): Do you remember when it was that you instructed that four rolls of wire be taken out of the lot,—representative rolls?

A. No, I can't remember.

Q. Well, do you remember when it was in relation to any of the other things that you have testified to? That is, do you remember who else was with you when you gave that instruction? Do you

(Testimony of J. B. Londono.)

understand? Mr. Diether wants to know [428] when these four rolls were pulled out, I suppose.

A. It was from the Pier A-1, Long Beach. You, Mr. Bunn, were present. Mr. Arturo Rendon was present. But I don't know who in person taken the rolls from the pile.

Q. Oh, I see. We are not asking you about the transportation of the rolls from the pier to any place of storage. I am asking you about the determination—do you understand—the determination of the identity of those four rolls?

Mr. Hubert Morrow: I don't understand the question.

The Court: I don't know. What are you trying to find out? Do you want him to tell that he told Koppel to take the wire? He said he met Koppel around August 23rd, or something like that.

Q. (By Mr. Bunn): Where was the instruction given? Where were you when the instruction was given? You said a moment ago that Mr. Bunn was present. Where was that?

A. At the dock.

Q. Did you hear any conversation at that time about the selection of four rolls?

A. All I remember is I said Koppel to take four coils or several coils representing the general quality and the general—

The Court: Do you know when the date was?

Mr. Bunn: I don't know the date. I know the circumstances. [429]

The Court: If you know, go ahead and lead him



(Testimony of J. B. Londono.)

on it. I don't see how anyone can be harmed. You were trying to fix a date.

Q. (By Mr. Bunn): Was it not in the latter part of August, Mr. Londono?

Mr. Diether: 1946?

Mr. Bunn: Of '46, of course.

The Witness: It was in August or September, 1946.

Q. (By Mr. Bunn): Did you hear any more of the persons you have mentioned, Mr. Koppel or me, say, "Take that roll" and "this roll," and "this roll," and "this roll"?

A. Not that I remember.

Q. Did you designate anything more than that they should be representative? A. Yes.

Q. What did you say?

A. I said that I wanted not any particular coil, but just samples that—(through interpreter) that could represent the general quality of the wire.

\* \* \*

Q. (By Mr. Bunn): Did you say whether the rolls should be all black or all galvanized?

The Court: He has answered the question. He said he wanted a sample of different kinds of wire and different qualities.

The Witness: Yes, your Honor.

The Court: Is that what it was?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Londono, do you know what was the fair market value in Los Ange-

(Testimony of J. B. Londono.)

les of good galvanized wire of the description as to location of barbs which is contained in the sale order that you signed to Dulien?

Mr. Diether: May I have the question read, please?

(Question read by reporter.)

Mr. Dasteel: Your Honor please, I object to that. The witness has not qualified himself as an expert on the price and sales and merchandising of barbed wire. It is sold in many quantities and under many conditions; new, unused, used. It would take an expert to testify as to the market value.

Mr. John Morrow: The defendant Matson objects as no [431] sufficient foundation laid. The witness testified that he tried to buy wire at about that time and none was available.

Mr. Laven: I join in the same objection.

Mr. Diether: I join in all of the objections that have been made.

The Court: And on the general ground that the court hasn't any jurisdiction? Nobody has brought that up except the government. They always deny it.

Mr. Dasteel: Has the court jurisdiction over it?

The Court: I don't know what it is doing here. I couldn't understand your question. I was trying to follow it.

Mr. Bunn: I shall apologize always for that.

The Court: It was something in relation to the price of wire, with the number and kind of barbs.

(Testimony of J. B. Londono.)

Mr. Bunn: I was referring to the description in the sale order. I think if the reporter will read my question, I believe it is clear. But if it doesn't appear to be so, I will work it over.

The Court: The sale order gives the specifications, and I think you had better include it in your question. It was just generally this, as to whether or not the witness knew during the period——

(The question was re-read by the reporter.)

The Court: It is indefinite as to time. [432]

Mr. Bunn: I will reframe it.

Q. Do you know what was the fair market value on July 29th and in the month of August, 1946, of galvanized barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals? [433]

Mr. Dasteel: The same objection, your Honor.

Mr. Diether: Object to that as incompetent, irrelevant and immaterial, and no proper foundation.

Mr. Bunn: In Los Angeles, I should say.

Mr. Diether: And this witness is not qualified or shown to be an expert in the evaluation of barbed wire. Also, on the further ground that the question is directed to a particular type of wire, which is not the type of wire which is specified in the contract.

The Court: That is what it says here.

Mr. Diether: "As purchased by the seller from the Department of Interior."

Mr. Laven: Unused.

(Testimony of J. B. Londono.)

Mr. Diether: Unused.

The Court: It doesn't say that under the heading "Specifications."

Mr. Diether: You mean "Unused"?

The Court: No. Under the heading "Specifications," it says: "12 and 12½ gauge 2 strand with four point barbs spaced at 3 inch and 4 inch intervals."

Mr. Diether: But you must read a sales order of that kind from all four corners. You can't pick out just one particular item.

The Court: Let's hear your objection.

Mr. John Morrow: It seems to me the question should [434] incorporate the exact words of the sales order, and perhaps Mr. Diether pointed that out. I think it should include all of it. I don't mean the whole sales order, but the description of the commodity.

The Court: I think the objection is good, in that insofar as the question does not include the word "Unused."

Mr. Bunn: I will incorporate the word "Unused" in the expansion of the question, your Honor.

Mr. Diether: And, further, there is nothing about rejection.

The Court: "Unused government surplus barbed wire, 12 and 12½ gauge," and so forth.

Mr. Bunn: I will accept the correction to the question.

The Court: The question now is: Whether or not you knew on July 29th, or the latter part of



(Testimony of J. B. Londono.)

July and the month of August, 1946, the fair market price in Los Angeles of unused government surplus barbed wire, 12 and 12½ gauge, two strand with four point barbs spaced at 3 inch and 4 inch intervals?

Mr. Diether: May I have an objection, please?

Mr. Hubert Morrow: We object. It is not what he knew on that date, but whether he knew the value on that date.

The Court: I thought I said: Did you know the fair market value.

Mr. Hubert Morrow: You proceeded on whether he knew on [435] that date the fair market value.

Mr. Bunn: My question is what the market value then was of barbed wire in Los Angeles.

The Court: I though I said that.

Mr. Bunn: I thought so, too.

Mr. Diether: There is nothing to show he is an expert.

The Court: How much qualification does it take to be a barbed wire expert?

Mr. Dasteel: More than appears to the naked ear or eye, your Honor, as will be determined from the evidence in this record.

The Court: I think he is qualified to express his opinion. The question now is whether or not he knows it and that calls for a "Yes" or "No" answer.

The Witness: Yes, sir.

Mr. Diether: Just a moment.

The Court: The objection is overruled.

Mr. Diether: Will it be understood that on this

(Testimony of J. B. Londono.)

line of testimony as to the fair market value of barbed wire that it all goes in subject to my objection?

Mr. Dasteel: And my objection.

The Court: And Matson, also?

Mr. Laven: We join in that.

Mr. John Morrow: We join in that.

Mr. Bunn: I wish I could join somebody in something. [436]

Mr. Dasteel: Would your Honor entertain a proposal to question the witness on voir dire?

The Court: I think Mr. Bunn did that.

Mr. Dasteel: Not to my satisfaction.

The Court: I think he has laid a sufficient foundation for this witness to be able to answer that question, whether or not he knows. The objections are overruled and you may answer the question "Yes" or "No." Do you know what it is, now?

Mr. Diether: Then, you mean?

The Court: Do you know now what my question is or what Mr. Bunn's question is?

The Witness: Yes. I knew because I was——

The Court: No, just answer "Yes" or "No."

The Witness: Yes.

Q. (By Mr. Bunn): Now, what was the fair market value in Los Angeles at that time?

The Court: Of unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 and 4 inch intervals——

Mr. Diether: May I make an inquiry of you?

The Court: ——in ton lots?

(Testimony of J. B. Londono.)

The Witness: When I say——

The Court: Just a moment. He wants to object.

Mr. Diether: Is your Honor overruling the objection on [437] the ground that this witness was an owner of the wire and, therefore, permitted to express an opinion as to its value, or, are you permitting it on the ground he is an expert and therefore qualified to express his opinion?

The Court: I am overruling the objections on the ground that the evidence sufficiently shows he is in a position to express an opinion on either or both grounds. In other words, a man can be an expert, but he doesn't have to be the best expert in the world to express an opinion, or whether or not he may have an opinion.

Mr. Hubert Morrow: We are renewing our objection to this question; the same objection as made to the previous question.

The Court: I understand.

Mr. Dasteel: We join in that.

The Court: The record shows everybody objects on the grounds heretofore assigned. All objections are overruled. Now, you may answer the question.

The Witness: Yes. May I explain through the interpreter?

The Court: All right.

Mr. Bunn: I think I will have to suggest that he let the interpreter interpret piecemeal as he goes along rather than saying quite so much.

The Interpreter: I can interpret the whole—all the phrases [438] that Mr. Londono has spoken.

(Testimony of J. B. Londono.)

The Court: Have you finished your colloquy with the interpreter?

The Witness: Yes, your Honor.

The Court: Proceed.

The Witness (through interpreter): I am not able to determine the price of wire as purchased by the government, but I could tell what the price is, the approximate price at which was offered wire as was described—I didn't get all the specifications—by 12 and 12½ gauge.

The Court: Four point barbs at 3 and 4 inch intervals.

The Interpreter: 2 strands, and so forth.

The Court: That is not galvanized?

The Witness: Galvanized and black.

Mr. Diether: I will move to strike the answer as not responsive because you asked for the value of the wire.

The Court: He hasn't answered it yet. He hasn't gotten around to the price. He is coming up to that.

Q. (By Mr. Bunn): Now, what was the fair market value in Los Angeles at that time of such galvanized wire, in good condition and free from rust—

The Court: In ton lots.

Q. (By Mr. Bunn): —in ton lots?

Mr. Hubert Morrow: I understood the objection we made to the basic question goes to all these questions without our [439] interrupting.

The Court: Surely. It will be deemed that the



(Testimony of J. B. Londono.)

objections of all parties will go to the entire line of interrogation on the grounds heretofore assigned.

Mr. Diether: May I point out that this question is galvanized wire, and the contract specifies certain kinds of wire.

Mr. John Morrow: Furthermore, the last question says "good wire," and the contract doesn't say anything about good wire.

Mr. Bunn: There is an implied warranty.

Mr. Diether: Oh, no.

Mr. Dasteel: No.

Mr. Bunn: There was a special warranty.

The Court: If we don't have recesses every hour, everybody gets into an argument.

(A short recess was taken.)

The Court: Proceed.

Q. (By Mr. Bunn): Now, Mr. Londono, do you now remember the question?

Mr. Bunn: Will you read the last question, please?

Mr. Laven: Just a moment. I would like to interpose an objection at this time, your Honor, that the O.P.A. price set at that time was the fair market value, and that it could not be sold for any more than that, and that in Los Angeles the [440] value of wire at that time was \$61.70 a ton. Therefore, any price above that would not be competent evidence here, and I object to it upon that ground.

Mr. Hubert Morrow: Counsel will bear in mind that we made certain objections to this question. One

(Testimony of J. B. Londono.)

was that the question embodies the use of the word "good," and we incorporated the objections made to the prior question.

Mr. Bunn: I said "in good condition." The question says, "in good condition."

Mr. Dasteel: Where in the sales order is there reference made to "good condition"?

Mr. Diether: May I add to the objection of Mr. Morrow and Mr. Dasteel the further fact that counsel is attempting to elicit the value of galvanized wire.

The Court: And some of it was galvanized wire and some was black.

Mr. Diether: If you will recall the testimony of the witness, where he said that Mr. Stanley and Mr. Grinstein asked he take the whole lot, and they would not sell him galvanized wire separately, as Mr. Londono suggested, and so we say that the price should be elicited on the basis on which the merchandise is described in the sales order.

The Court: What is the name of that case on which you based your objection? It just came down.

Mr. Laven: I can't call it just at this moment.

The Court: Bring me the latest Supreme Court decisions and the little brown book. It is on my desk.

I think you would be justified in eliciting this witness' opinion as to the value of unused government surplus barbed wire, with the specifications of apparent good order and condition, or good order and condition.

(Testimony of J. B. Londono.)

Mr. Bunn: I will incorporate into my question the descriptive language.

The Court: Then why don't you just frame your question completely now.

Q. (By Mr. Bunn): Mr. Londono, what was the fair market value in Los Angeles on the 29th—

The Court: When you say "What was the fair market value," you are asking for his opinion?

Mr. Bunn: Oh, yes.

Q. —on July 29th, and throughout the month of August, 1946, for unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals, galvanized, in apparent good order and condition?

Mr. John Morrow: We have the further objection that there is no specification in the sales order of "apparent good order and condition," as well as all the objections heretofore made.

Mr. Dasteel: I would like to emphasize Mr. Diether's [442] objection to this point, that this was sold as a package job, both the galvanized and black cut. There was no difference at all between the price, no differential. The price on both black and galvanized was the same. It was a package deal.

The Court: Your question included "in tons"?

Mr. Bunn: I failed to say it. I will add: in tons.

The Court: All the objections are overruled, except Mr. Laven's, which I will rule on shortly, after I read this decision handed down March 27th, and

(Testimony of J. B. Londono.)

which, when I read it for the first time, I put a great big question mark on it.

Mr. Dasteel: Before you rule on Mr. Laven's objection, I don't understand his objection clearly. I would like to hear it.

The Court: Just a moment. Here is the case of *United States v. Commodities Trading Corp.*, and others. This was a suit against the government to recover in the Court of Claims just compensation for 760,000 pounds of whole black pepper, requisitioned by the War Department.

Mr. Hubert Morrow: That is the case in which Justice Frankfurter dissents, I believe.

The Court: I thought he dissented in every opinion he didn't write.

Mr. Hubert Morrow: Not quite. [443]

The Court: He dissented in part.

Mr. Hubert Morrow: It turned upon the criterion that the buying of the pepper took place over a period of time.

The Court: That's right. The majority opinion was written by Justice Black, and held that what was described as a retention value could not be taken into consideration.

Mr. Hubert Morrow: Justice Frankfurter said it should have been given consideration.

The Court: I do not think that the decision in this case, *United States v. Commodities Trading Corporation*, is controlling in this instance. The question here was solely what was the measure of just compensation as against the government of



(Testimony of J. B. Londono.)

the United States seizing a necessary product in war time. The government's objection is overruled. All objections are overruled.

Mr. Diether: May I ask Mr. Laven what the basis for his statement is that the O.P.A. price was \$71.60?

Mr. Laven: No, \$61.70 a ton. There was some correspondence and some conversations between Mr. Bunn and Mr. Banning, and Mr. Bunn's report of his call to Washington, to the Metals Price Branch of the O.P.A., which must approve the sales price of the imports, and that it was considered.

The Court: Of exports or imports?

Mr. Laven: Of imports.

The Court: This is not an import. [444]

Mr. Laven: They said under the ruling that shipments from Honolulu were imports, according to the O.P.A. regulations, and that they had an opportunity to sell it, I believe, in this country, or in the United States for that price, but because Mr. Londono wanted to transship it to South America, they refused to sell it for the \$61.70 price, the wholesale price in this area at that time.

Mr. Bunn: I don't understand. I don't understand the last part of that statement. That does not click with me, if you are quoting me on that.

The Court: No, I understood he was quoting Mr. Somebody, in Washington.

Mr. Laven: Mr. Banning of Matson, with whom Mr. Bunn conferred, or who reported to Mr. Banning his findings relative to inquiry in Washington,

(Testimony of J. B. Londono.)

and Mr. Bunn refused to permit it to be sold, I believe, to Sugarman in San Francisco, who made an offer of something like \$71 a ton until they got the approval of the Metals Price Board in Washington.

The Court: That was a sale in the United States?

Mr. Laven: That was a sale in the United States.

The Court: Not for transshipment?

Mr. Laven: Not for transshipment, your Honor.

Mr. Bunn: Is that any indication of any offer?

The Court: The objection is overruled.

Mr. Diether: If there is any O.P.A. ceiling on this sale [445] of the wire in the United States, I wish also to object to the testimony on the ground it is contrary to the O.P.A. price.

The Court: The objection is overruled.

Mr. Bunn: Now, may the witness be put the question as last given by me and amplified once, I think, at the court's suggestion.

(The question referred to was read as follows: "Q. Mr. Londono, what was the fair market value in Los Angeles on the 29th—on July 29th and throughout the month of August, 1946, for unused government surplus barbed wire, 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals, galvanized, in apparent good order and condition, in ton lots?")

The Court: One more element.

(Testimony of J. B. Londono.)

Mr. Bunn: Thank you.

The Court: —for transshipment.

Q. (By Mr. Bunn): —for transshipment out of the country? [446]

Mr. O'Malley: Objected to as indefinite and uncertain. Shipment to where?

Mr. Bunn: Out of the country.

The Court: To South America.

Mr. Bunn: To Colombia.

The Court: All right. To Colombia.

The Witness: It was between \$160 per ton and \$180 per ton, because for good wire, galvanized wire—I can't say government wire, but I say galvanized wire, twice, gauge 12, four point at 4 inch, and I had offers at that time for that price, and I knew that Gonzalez & Blanco sold wire for that price in Los Angeles for transshipment to Mexico.

Mr. Laven: I object to the last part of the answer as to what Gonzalez & Blanco did.

Mr. Bunn: It is a part of the foundation for his narration of the value.

Mr. Laven: And it is not responsive.

The Court: No, it isn't responsive, but somebody is going to take him on cross-examination and get onto that, and then he is going to say the same thing. The motion to strike is denied.

Mr. Hubert Morrow: May I ask to hear the answer read?

The Court: Well, the long and short of it was that it was between \$160 and \$180 a ton.

Mr. Hubert Morrow: I know that is the long

(Testimony of J. B. Londono.)

and short of [447] it, but it is in between I am interested in.

(The answer referred to was read.)

Mr. Hubert Morrow: Your Honor, it seems to me that the answer is not directed to the question. It has eliminated one of the elements of the question. He said he can't say as to government surplus wire.

The Court: He has, however, included the two-strand, 12-gauge, 4 barbs spaced at three and four-inch intervals, which makes it sufficiently certain to allow him to answer.

Mr. Diether: He referred to the fact that Gonzalez & Blanco were selling wire in Mexico. That, I think, is not responsive, and is also hearsay on his part, and I think it should be stricken.

The Court: It is hearsay, but as I indicated to Mr. Morrow, somebody will take him on cross-examination and out it will come. If you want it out, I will strike it. Do you want it out?

Mr. Diether: Please.

The Court: All right. It is just more words in your transcript.

Mr. Bunn: You only struck out a part, your Honor?

The Court: The part where he said that Gonzalez and Blanco shipped some to Mexico, and so forth.

Q. (By Mr. Bunn): Now, Mr. Londono, do you know, or I believe the court said to fix it as



(Testimony of J. B. Londono.)

an opinion—what is [448] your opinion as to what was the fair market value in Los Angeles on July 29th and throughout the month of August, 1946, of unused government surplus barbed wire, 12 and 12½-inch, two-strand with 4 point barbs spaced at three-inch and four-inch intervals, black, in apparent good order and condition, in ton lots——

The Court: For——

Q. (By Mr. Bunn): ——for transshipment out of this country——

The Court: To——

Q. (By Mr. Bunn): ——to South America?

Mr. Diether: Object under all of the grounds heretofore stated.

The Court: It will be deemed all objections heretofore made by anybody are taken on behalf of them to the entire line of questioning.

The Witness: I had no offer from Colombia at that time for black wire. I knew by Gonzalez & Blanco——

The Court: Not how you know. Just what it was. Did you have an opinion as to the value?

The Witness: Yes. It was between \$120 per ton and \$140 per ton.

The Court: All right. Of course, in the matter of forming an opinion a man can ask questions. That is the way the most of them get their opinions—the experts. [449]

Q. (By Mr. Bunn): Now, Mr. Londono, do you know, or, do you have an opinion as to what was the value of unused government surplus barbed

(Testimony of J. B. Londono.)

wire, 12 and 12½-gauge, two-strand with 4 point barbs spaced at three and four-inch intervals, in apparent good condition in ton lots in Colombia in the month of August, 1946?      A. No.

Mr. Diether: Just a moment. His testimony is that he wasn't in Colombia at that time. He was in this country.

The Court: He still might be able to give an opinion as to the value of it. He was in the export business in Colombia. But his answer is "No." Do you want his answer——

The Witness: I have not completed my answer.

The Court: You haven't completed it?

The Witness: I didn't know the price in Colombia.

Mr. Bunn: I beg your pardon?

The Witness (Through interpreter): I didn't know the price in Colombia. I knew the price at which merchants in Colombia were willing to buy the wire.

Mr. Bunn: That is the value.

The Court: I don't know, but it is a sufficient factor for him to express an opinion.

Q. (By Mr. Bunn): All right. What was that price?

A. It was between \$160 per ton and \$180 per ton for galvanized wire. [450]

The Court: And how much for black?

The Witness: I had not offer for black, your Honor.

Q. (By Mr. Bunn): Just a moment, please,

(Testimony of J. B. Londono.)

Q. Mr. Londono, I call your attention to your answers to certain interrogatories propounded to you by the Citizens Bank, and answered and signed by you in Colombia, and on file here in this [451] case.

The Court: What date were they filed? Do you recall, Mr. Bunn?

Mr. Bunn: I am sorry, my copy doesn't show the date of the filing. But I have a copy of it here. It was before the bank's answer was filed. They were dated December 10, 1947, and his answers were dated in Colombia, so it was probably two weeks thereafter.

The Court: I have it; filed December 30th. Now, which one is it?

Q. (By Mr. Bunn): I call your attention to the fact that in one of those answers on page 14, the answer to question 24, you show 4.9 tons of wire as having been lost account of. Do you understand me?

May I show the witness a copy of his answer?

The Court: Surely.

Q. (By Mr. Bunn): I show you a copy of your answer to the bank's interrogatory No. 24.

A. Yes.

Q. And call your attention to the statement herein contained over your signature that 4.9 tons were lost account of.

A. Yes.

Q. Will you explain that? That is, is that included in the 81 tons you say the shipment was short?

A. No, it is out of that 81 tons. [452]

(Testimony of J. B. Londono.)

Q. When was that determined, do you know?

A. By your records, by Mr. Bunn's records, after Gonzalez & Blanco take the wire.

Q. You mean on the final wind-up or disposition of the last of the wire? A. Yes.

Q. Do you know what became of that 4.9 tons?

A. No.

Q. Do you know that it ever existed in this shipment?

Mr. Hubert Morrow: Which shipment?

Mr. Bunn: The shipment on the "White Squall" from Honolulu.

(The question was interpreted.)

The Witness: No, I don't know.

The Court: He says he doesn't know.

Mr. Diether: What record is the witness referring to? He says, "Mr. Bunn's records."

Q. (By Mr. Bunn): Mr. Diether wants to know what records you are referring to when you say "Mr. Bunn's records"?

A. I call records the shipping documents on the shipment to Colombia and the record of the sales to Gonzalez and Blanco. [453]

\* \* \*

April 25, 1950.

Mr. Dasteel: I believe counsel said that he wished to offer some wire in evidence, some exhibits, and it should be on direct examination while the



(Testimony of J. B. Londono.)

witness is on the stand. I think he should complete his direct examination.

Mr. Bunn: I can't offer the wire in evidence this morning because Mr. Londono himself cannot under oath trace that wire from the dock to this courtroom.

Mr. Hubert Morrow: Cannot it be put in for identification and let him testify to it, subject to a motion to strike?

Mr. Bunn: I am very happy to do so.

Mr. Laven: If the court please, I would like to make a request. Before these exhibits are offered, either for identification or otherwise, so there wouldn't be any question about it, we would like to have the privilege of taking some samples of wire for further inspection.

The reason we ask it now is we don't want to do it after it is offered; we want to do it before it is offered. [481]

Mr. Bunn: I certainly have no objection to their taking samples from those rolls.

The Court: Then they should be marked for identification before you take any samples.

Let us mark them for identification, Mr. Clerk.

The Clerk: No. 51.

The Court: We will make them 51, 52, 53 and 54.

Mr. Bunn: May I ask that the one to the court's left——

The Court: The galvanized, the white wire?

Mr. Bunn: ——be marked No. 1.

The Court: No. 51 is the galvanized.

(Testimony of J. B. Londono.)

(The wire referred to was marked Plaintiff's Exhibit No. 51 for identification.)

Mr. Bunn: And 52 the one immediately next to it to the left.

The Court: No. 52 is the next one, and then 53 the next, and 54 the black.

We will tie tags on them at this time so they may be marked.

(The wire referred to was marked Plaintiff's Exhibits Nos. 52, 53 and 54 for identification.)

The Court: Now without going through all the process of having somebody get up here and tell us what they are, what are they? They are hundred pound rolls or 28 pound rolls? [482]

Q. (By Mr. Bunn): Mr. Londono, what poundage are these?

A. Supposed to be hundred pounds.

Q. Mr. Morrow asks if they are not 103 pound gross. What is your answer?

A. Between 100 pounds and 103 pounds.

Q. But called 100 pounds net?

A. Net; yes.

Q. Now the one on the extreme right over here——

The Court: No. 51.

Q. (By Mr. Bunn): ——No. 51, will you tell us what kind of wire that is, if you know?

A. Galvanized wire.

Q. And the one to the extreme left, way over

(Testimony of J. B. Londono.)

there by Mr. Dasteel, No. 54, can you tell us or do you know what kind that is?

A. Look black wire.

Q. You mean looks like?

Mr. Dasteel: Is it or is it not black?

Mr. Hubert Morrow: It appears to be black.

The Court: I understand him. It looks like black wire. That is what he says.

Q. (By Mr. Bunn): Now, Mr. Londono, I call your attention to the two [483] rolls, Nos. 52 and 53, in the middle there, and ask you if you know what kinds of wire they are.

A. The 53 looks like rusty wire but I can't say whether it was galvanized or not. It is not galvanized now.

Q. Now No. 52.

A. It is very rusty wire. I can't say it was galvanized or not. Of course now it is not galvanized.

Q. What do you mean by the statement that now it is not galvanized?

A. Because it don't have any——

Mr. Hubert Morrow: Isn't it plain what he means?

The Court: He is asking the interpreter.

The Witness (Through Interpreter): ——any coating of zinc.

The Court: Very well.

Q. (By Mr. Bunn): Now, Mr. Londono—you had better ask him this in Spanish—to what extent, if at all, are those rolls of wire representative of

(Testimony of J. B. Londono.)

the general mass or wire which was on the pier, 1-A, at Long Beach, when you saw it as described in your testimony?

Mr. John Morrow: Objected to as no foundation laid as to which occasion he means, your Honor. He testified to several occasions.

Mr. Dasteel: It should be limited to some particular [484] time.

The Court: He testified 75 per cent of the wire was rusty and 25 per cent of it was usable. The objection is overruled. You can answer the question.

The Witness (Through Interpreter): It includes Gonzalez & Blanco wire.

The Court: Let me ask a question.

You testified that about 75 per cent of the wire—what page was it he corrected?

Mr. Hubert Morrow: Page 286, lines 9 and 10.

Mr. Bunn: Is the court not asking about the correction I made without having it in my notes, changing the word from “hard” to “half”?

Mr. Morrow: That is one.

Mr. Dasteel: I move that the last answer of the witness be stricken as not responsive to the question.

The Court: The question and the answer are both stricken.

Mr. Londono, you testified that about 75 per cent of the wire was rusty and 25 per cent in good condition, including the black and galvanized.

Mr. Bunn: If your Honor please, that testimony was as to the portion that he shipped to South America.



(Testimony of J. B. Londono.)

The Court: As to the portion shipped to South America.

Are any of those exhibits there, 51, 52, 53 and 54, [485] representative of the 75 per cent you described or the 25 per cent you described? Do you understand the question?

The Witness (Through Interpreter): Yes.  
The 51.

The Court: No. 51 represents what?

The Witness: Represents the galvanized.

The Court: What per cent?

The Witness: About 20 per cent.

The Court: 20 per cent?

The Witness: Yes.

The Court: Go ahead with your answer.

The Witness: And the 54, No. 54——

The Interpreter: He said that 25 per cent represents both. This is 51 and 54.

Mr. Diether: What is that?

Mr. Dasteel: I don't get his answer.

Mr. Bunn: Will the reporter read that last answer? I think it is clear.

The Court: I understood him. Nos. 51 and 54 represent the 25 per cent that he spoke of in his testimony as being in good condition, including the black and the galvanized shipped to Colombia. [486]

Mr. Bunn: Not including, if your Honor please, but that he was speaking in his testimony about that which was shipped to Colombia.

The Court: He testified that he shipped the 1,050 tons.

(Testimony of J. B. Londono.)

Mr. Bunn: 1,051 tons.

The Court: 1,051. I think he later corrected that and testified later on that he shipped about 200 tons of galvanized.

Mr. Bunn: If your Honor please, you asked him and he cleared that up, that that was included in the 1,051.

The Court: 200 tons of galvanized wire and 851 tons of black wire.

Now, Mr. Witness, the 200 tons that you testified, approximately, that you shipped to Colombia of galvanized wire was in approximately the same condition as Exhibit 51—the galvanized?

The Witness: No, your Honor. Some of the wire that was shipped was rusty—the galvanized was rusty.

The Court: Some of the galvanized was rusty?

The Witness: Yes, your Honor.

The Court: Now, the 851 tons of black wire that you shipped, you testified that 25 per cent of it was dirty and 75 per cent of it was badly rusted?

The Witness: Yes, your Honor.

The Court: Are any one of those exhibits, 52, 53 or 54 [487] comparable to either the dirty wire or the badly rusted wire?

The Witness: Yes.

The Court: Which ones?

The Witness: The No. 52 and 53 represents the rusty, the badly rusty wire, and the one that was black wire represented the dirty wire but usable, more or less in good condition.

(Testimony of J. B. Londono.)

The Court: I understand his answer.

Mr. Bunn: I do.

The Witness (Through Interpreter): 53 and 52 represent the wire that I shipped 75 per cent of, and 54 represents the wire that was 25 per cent, that although dirty was usable.

The Court: All right.

Q. (By Mr. Bunn): What do you mean? Was there any mud on the wire? Do you understand "mud"? (Interpreted.)

A. (Through Interpreter): There was plenty mud, but it has dried with time.

Mr. Diether: What is that answer?

The Witness (Through Interpreter): There was plenty mud on the wire, but it has dried with time.

Mr. Hubert Morrow: Which wire is he talking about? That shipped, or that on the dock, or what?

The Court: I don't know.

Q. (By Mr. Bunn): To what extent, if at all, was there [488] mud on wire as you viewed the entire quantity of wire on the dock?

Mr. Diether: That is the same question.

Mr. Dasteel: That is the same question. The witness has already testified that the mud all dried off.

The Court: He didn't say "dried off."

Mr. Dasteel: He said, "dried in time," which could mean the same thing.

The Court: Objection overruled.

Mr. Bunn: You may answer the question.

(Testimony of J. B. Londono.)

The Witness (Through Interpreter): About 50 per cent.

The Court: What is the difference, whether there is mud on it or not? Is there going to be some contention that he weighed mud and sold it for barbed wire?

Mr. Bunn: Not as to weight, but as to appearance of the barbed wire for sale.

Mr. Dasteel: Your Honor please, in any event I object that that type of testimony is incompetent, irrelevant and immaterial, and, certainly, when we sold this wire we did not tell him there would be no mud on it. We said, and it is in the contract in black and white, that it was to be as purchased from the Interior Department. If we purchased black wire from the Interior Department that had mud on it, that is what he bought, and that is what he received.

The Court: If I sustained your objection, it would be a [489] decision in the law suit in your favor.

Mr. Dasteel: I would like that.

The Court: The objection is overruled.

Mr. Bunn: Might we have the question, please?

The Interpreter: He answered, "About 50 per cent."

Mr. Diether: Had mud on it?

Q. (By Mr. Bunn): You say about 50 per cent had mud on it, Mr. Diether asked? A. Yes.

Mr. Dasteel: May I take the witness on voir dire to find out if he knows what 50 per cent means?



(Testimony of J. B. Londono.)

The Court: No.

Q. (By Mr. Bunn): Now, Mr. Londono, when you first saw wire on the pier at Long Beach in the week which began on July 29th, did you see more than one kind of wire?

Mr. Diether: That has already been asked and answered and gone over on direct examination.

The Court: Yes.

Mr. Bunn: All right.

The Court: While he is there, I would like to ask one or two questions. Do any one of these exhibits, 51, 52, 53 or 54, represent what you have testified to as not usable wire, so badly rusted it could not be used (interpreted).

The Witness: Yes, your Honor. 52 is unusable.

The Court: Is unusable. Was that the approximate [490] condition of the wire that you had pickled?

The Witness: Yes, your Honor; and 53, too.

The Court: Is not usable?

The Witness: Is usable.

Mr. Bunn: Under what circumstances?

The Witness (Through Interpreter): Under the circumstances of the wire being very scarce and after it had been cleaned.

The Court: All right.

Q. (By Mr. Bunn): Mr. Londono, do you observe any rust on No. 51?

Mr. Dasteel: I object to that, your Honor please. The exhibit speaks for itself. And I think

(Testimony of J. B. Londono.)

it calls for the conclusion of the witness. We have the exhibit here.

The Court: Overruled.

The Witness (Through Interpreter): Very slight spots of oxidation.

Mr. Diether: May the record show the witness has gotten within a foot of Exhibit 51 and examined it closely, and spent approximately 20 seconds in examining the coil.

Mr. Dasteel: And then had trouble finding it.

The Court: The latter part may be stricken.

Mr. Bunn: I think that is all by me from this witness at this time, if your Honor please.

I see that I failed to offer in evidence, although it is [491] marked for identification, item No. 2, which is sale order No. LA 712, and I wish at this time to offer that into evidence—the sale order.

Mr. Diether: What number is that?

Mr. Bunn: No. 2 on my list of documents. I have checked the transcript carefully and it appears in the transcript index as being in for identification only, unless I am mistaken.

The Court: It is marked in evidence. In any event, it is in evidence.

(The document referred to, heretofore marked Plaintiff's Exhibit 2, for identification, was received in evidence.)

The Court: Cross-examine. Or do you want a morning recess?

(Testimony of J. B. Londono.)

Mr. Dasteel: That would be a good idea, your Honor.

The Court: All right.

(A short recess was taken.)

Mr. Bunn: I am thinking that we should be thankful we don't have any more recesses than we do. The witness at the recess went to Mr. Morrow and told him there was one thing further he should say, that he wanted to say in answer to my question about the extent to which there was mud on the wire, and he wants permission to amplify that answer.

The Court: All right. [492]

Mr. Bunn: What was it you wanted to say about mud on the wire?

Mr. Hubert Morrow: I don't know why he came to me, but he did.

Mr. Bunn: Well, you are just benign-looking.

The Witness (Through Interpreter): Some of the wire was sort of caked up with rust and mud so that there could hardly be distinguished the barbs in it.

The Court: All right.

Mr. Bunn: Is that all you wanted to say?

The Witness: Yes, sir.

The Court: Cross-examine.

(Testimony of J. B. Londono.)

Cross-Examination

By Mr. Dasteel:

Q. Mr. Londono, I believe you testified to the fact that prior to the time you contacted Dulien Steel Products, Inc., whom I shall hereafter refer to as Dulien, that you had dealings with the Citizens National Bank of Los Angeles in connection with letters of credit; is that right? A. Yes.

Q. And that you had a letter of credit in the amount of \$160,000 with the Citizens Bank?

A. Yes.

Q. Whose money was that?

Mr. Bunn: I object to the question as incompetent, [493] irrelevant and immaterial. He is talking about a previous transaction. This man is an importer.

The Court: What difference would it make whose money it was?

Mr. Bunn: I say, what difference does it make? It is immaterial.

Mr. Dasteel: If your Honor please, we want to show—the plaintiff alleges he used his own money and he lost his own money, and I want to find out if he was operating for himself as a principal or as an agent for someone in Colombia——

Mr. Bunn: Even if he were——

Mr. Dasteel: ——or if he is the real plaintiff in this case.

Mr. Bunn: Even if he were operating as an agent, he would still have a perfect right to bring



(Testimony of J. B. Londono.)

an action in his own name for losses that he suffered or that were suffered in the transaction. But since the question has been injected, I withdraw my objection.

Mr. Dasteel: You may answer.

The Witness (Through Interpreter): Mr. Echavarria of Colombia send me that money as an advance payment on 1,000 tons of barbed wire that I have sold him. [494]

Q. (By Mr. Dasteel): Was this the \$160,000 that you used to pay Dulien for the wire?

A. Yes, it was one part of the \$214,000.

Q. Now, you shipped a certain quantity of wire to Echavarria, this customer that you speak of. How much in money did you charge him for the wire you shipped?

Mr. Bunn: I object to the question as incompetent, irrelevant and immaterial. The essence of this lawsuit, as I take it, is, basically, first the difference between the price which this man paid and the reasonable market value in Los Angeles for export to South America, and even if—although it didn't happen—even if he had sold the wire at a profit, he would still, under my interpretation of the cases, be entitled to his damages. He didn't, but if he had. And I contend that the question is immaterial, incompetent and irrelevant.

The Court: I think counsel is entitled to elicit this information on cross-examination. It is one of the elements that may be considered.

The Witness may answer the question.

(Testimony of J. B. Londono.)

The Interpreter: Will you repeat the question?

(The question referred to was read by the reporter as follows: "Q. Now, you shipped a certain quantity of [495] wire to Echavarria, this customer that you speak of. How much in money did you charge him for the wire you shipped?"

The Witness: In order to collect the credit from him, Mr. Echavarria, for \$160,000, I made invoice at the price of \$160 per ton cif Colombian port.

Later on, when I suppose that I will ship to him good galvanized wire, as I supposed to purchase from Dulien, but when I knew the wire, I saw the wire, I invoiced to him \$107 per ton, plus the freight and moving charges here, in order to comply with the control board regulation in Colombia. In other words, I charge Mr. Echavarria the money I pay here to Dulien and to Mattoon.

The Court: How much money did you get from Echavarria?

The Witness: I had from him \$75 per ton.

The Court: \$75 per ton?

The Witness: Yes.

The Court: That is the total?

The Witness: Yes, sir.

The Court: Of all the 1051 tons you shipped?

The Witness: 1025 tons, your Honor, because additional 25 tons I shipped in my name to my company in Colombia.

The Court: Then your answer is that you got

(Testimony of J. B. Londono.)

\$75 a ton from Echavarria for the 1025 tons shipped to him in Colombia?

The Witness: Yes, your Honor. [496]

The Court: Plus repayment to you of the freight?

The Witness: Oh, yes. He paid the freight.

Q. (By Mr. Dasteel): Then you have a credit against that \$160,000 of Mr. Echavarria's money of how much in connection with the wire you shipped to him?

The Court: That assumes that it was Echavarria's money. He said that he advanced the money to him.

Mr. Bunn: I object to the question on that ground, and thank you.

Q. (By Mr. Dasteel): Have you paid Mr. Echavarria back the difference between \$160,000 he advanced you and the amount of wire you sold him?

A. Yes.

Q. When did you do that?

A. In several times in 1947.

Q. Then at this time you do not owe Mr. Echavarria any money as a balance due on that \$160,000 letter of credit, is that right?

A. I don't owe him as a part of the \$160,000 letter of credit, but I owe him the interest from the time he send me the money until the time I ship the wire, and on to the time I pay him the last cent.

Q. Now, Mr. Londono, you testified that on July 11 you [497] went to the office of Dulien?

A. Yes.

(Testimony of J. B. Londono.)

Q. About some barbed wire? A. Yes.

Q. How did you know that Dulien had barbed wire for sale?

A. Mr. Tuthill and Mr. Stinson reported to Mr. Rendon in his office in my presence that some barbed wire will be available at the Dulien office.

\* \* \*

Q. Just a minute. Confine yourself to answering the question, please, and just state the conversation that took [498] place, what was said and by whom on that particular occasion.

A. Mr. Tuthill and Mr. Stinson come to the office of Mr. Rendon. I was present. Mr. Tuthill and Mr. Stinson told Mr. Rendon——

Q. Who said it? A. Both.

Q. They didn't talk at the same time. Just tell me who said what. A. Mr. Stinson.

Q. What did he say?

A. That some barbed wire, it was available in Los Angeles.

Then Mr. Tuthill take place in the conversation and say, "Yes, some barbed wire is available in Los Angeles."

And I answer, "I want to see the wire."

They take us, Rendon and I—— [499]

\* \* \*

Q. Then what did you do? You went down to the office of Dulien?

A. We went down to Dulien's office in Mr. Tuthill's car.



(Testimony of J. B. Londono.)

Q. Just a moment. Who went with you to Dulien's office?

A. Mr. Stinson, Mr. Tuthill, Mr. Rendon and I in Mr. Tuthill's car. He drove. A black Packard, I remember.

Q. Who did you see at Dulien's office?

A. I saw Mr. Grinstein and many other men in the office. I talked to Mr. Grinstein.

Q. What did you say to Mr. Grinstein?

A. Mr. Tuthill told Mr. Grinstein that Mr. J. B. Londono from Colombia, South America, wants to buy barbed wire. And I say, "Yes, I am looking for barbed wire. I want to buy barbed wire."

And Mr. Grinstein told me that Dulien has a lot of barbed wire coming from Honolulu.

Then I ask about the quality of the wire, or samples of the wire, and he say that the wire is coming but they had in his place a quantity of wire that would represent the lot coming from Honolulu. [500]

Then I asked to see it. Then Mr. Grinstein take me and Mr. Rendon and Mr. Tuthill and Mr. Stinson out to the yard, open place, and show me a pile, a small pile of barbed wire, looked black, covered with grease, and he told me that the wire coming from Honolulu would be the same quality, the same appearance of that wire. And in addition to that lot, to that quantity of black wire, he told me that it would be equal quantity of galvanized wire.

And I asked him about, he has that kind of gal-

(Testimony of J. B. Londono.)

vanized wire, and he say, "No, we have not the same kind of galvanized, we have small quantity of galvanized wire which quality is equal to the galvanized coming from Honolulu." And he showed me small coils of galvanized.

Then we discussed about the price. The first time they asked for \$108, and I offered \$103 or \$105. At least I accepted \$107 per ton.

Then I required from Mr. Grinstein samples, and he offered to give me cut samples of the wire.

Then into the office I accepted, I agreed to buy 2700 tons of barbed wire, supposed to be half galvanized and half black.

Q. When Mr. Grinstein showed you some barbed wire, didn't he say, "It is this type of wire"? Didn't he use the word "type"?

A. He used the words, "The wire coming is the same." [501]

Q. He didn't tell you, did he, that this was not from the lot of wire that was in Honolulu, he told you that this is different wire?

A. He told me that wire is part of the wire bought by Dulien from the government in Honolulu.

Q. He told you that the wire he showed you on July 11th was part of the wire that was in Honolulu, is that your statement?

A. No, part of the wire that Dulien had bought from the government in Honolulu. And at that time I understood that Dulien had other lots of wire that had come previously from Honolulu. [502]

Q. Didn't you testify to the effect that you

(Testimony of J. B. Londono.)

knew that this wire was not the wire from Honolulu, but was other wire and that Dulien, through Grinstein, simply told you that this is the type of wire which we had in Honolulu?

A. (Through Interpreter): Was what I understood.

Q. What was your answer?

The Court: I don't know how he can understand your question if we have a little difficulty with it in the English language.

Q. (By Mr. Dasteel): I will restate the question in plainer language. Didn't you testify, both in your deposition and here in this court, to the effect that the samples of wire which were shown you at Dulien's office were not from the lot of wire that was being brought from Honolulu?

The Court: Counsel, if you are attempting to impeach him, I think you had better refer the court to the testimony you refer to.

Mr. Dasteel: I will withdraw that question for the present, in order not to take the time to dig it up. I will withdraw the question.

Q. (By Mr. Dasteel): Now, the wire that Mr. Grinstein showed you on July 11th, was that covered with grease? A. Yes, black.

Q. And he told you that the wire that was being shipped from Honolulu would also be covered with grease, isn't [503] that correct?

A. Yes, and he gave me the name of the grease. I know that because in my telegram to Colombia reporting the business——

(Testimony of J. B. Londono.)

Q. Wait a minute. In your telegram——

A. I sent a telegram to Colombia—when I bought the wire from Dulien. I sent a telegram to Colombia and I used the name of the grease that Mr. Grinstein told me.

The Court: What was the name of the grease?

The Witness (Through Interpreter): Cosmoline from DuPont.

Q. (By Mr. Dasteel): Did you take with you samples of the wire that Mr. Grinstein showed you that day, on July 11th?

A. I take with me the samples that Mr. Grinstein gave me on July the 11th or July the 12th.

Q. Can't you remember definitely which day you took those samples?

A. (Through Interpreter): 99 per cent probabilities are that it was the 12th.

Q. Are you sure?

The Court: He just got through saying he was 99 per cent. [504]

\* \* \*

Q. (By Mr. Dasteel): You are 95 per cent sure? A. 99 per cent.

Q. Oh, 99 per cent sure? A. Yes.

\* \* \*

Q. (By Mr. Dasteel): I show you Plaintiff's Exhibit No. 36, which purports to be six or seven strands of wire approximately 7 inches in length. Now, I ask you is this the samples that you just testified to, that you think you got on July 12th?



(Testimony of J. B. Londono.)

A. (Through Interpreter): Not that I believe, but I am sure that they are.

Q. At the time you received them, where were you? Were you in the office of Dulien, or out in the yard?

A. In the office of Dulien with Mr. Arturo Rendon.

Q. Did you see these samples cut off a roll? Did you see them cutting them off?

A. I don't remember, but I was sure that the quality—— (through Interpreter) I am not sure, but I am sure that this is the same quality of wire which I was shown the day before.

Q. That is not the question I asked you. I asked you if you saw them cut these samples from the rolls? [505]

A. I don't remember, Mr. Dasteel.

Q. You don't remember?            A. No.

Q. What do you remember in connection with just how you received them?

A. I remember that Mr. Grinstein in person gave me the samples in the office.

Q. Well, did he bring it in his hands and say, "Here it is"? Just how did he do it? Do you remember the circumstances under which this was produced and shown to you (interpreted)?

A. (Through Interpreter): I am sure that he gave me the samples personally, but I cannot determine the words he used when he made delivery of the samples.

(Testimony of J. B. Londono.)

Q. Who was present at the time that you received these samples?

A. Mr. Rendon, and I don't know if Mr. Tutill was.

Q. What did you say to Mr. Grinstein when he handed you the samples, after you had looked at them? Did you make any statement?

A. I take the samples in my hands. I look at the samples—— (through Interpreter) and I concluded that they were the same quality as the rolls that have been shown previously. (In English) And maybe I say, "Thanks, Mr. Grinstein." [506]

\* \* \*

Q. By that do you refer to the rolls that were in the Dulien yard? A. Yes.

Q. Did you tell him anything about the fact that this would be satisfactory, this type of wire?

A. (Through Interpreter): When I bought the wire and I signed the contract, it was because the samples were satisfactory.

Q. I show you a sample, one of the particular samples. That has what appears to be mud on it?

A. Yes.

Q. That was quite satisfactory with you, was it (interpreted)?

A. (Through Interpreter): As I saw the rolls of wire on the floor, I didn't particularly call my attention to the fact that they were slightly contaminated with mud.

(Testimony of J. B. Londono.)

Q. But you do observe there is mud on this sample, do you not? [507]

\* \* \*

The Witness (Through Interpreter): No, I could not determine whether that is mud.

\* \* \*

Q. (By Mr. Dasteel): Will you ask the witness, please in Spanish if by his mention of mud he refers to foreign matter sticking to the wire regardless of the ingredients, of what it comprises?

A. (Through Interpreter): When I see the mud, the mud on this wire, I don't know what type of mud it would be, because it also has grease attached to it. [508]

\* \* \*

Mr. Dasteel: May I ask that this particular piece of wire be marked Exhibit 36-1?

The Court: Surely.

(The article referred to was marked Plaintiff's Exhibit 36-1, for identification.) [509]

\* \* \*

Q. (By Mr. Dasteel): Now, Mr. Londono, I show you another one of the strands or pieces of barbed wire, and ask you to inspect it closely, and tell me whether or not you see anything that has the appearance of rust or red dust, and I want you to look at it just as closely as you did the roll on the other side of the courtroom.

A. (Through Interpreter): I did not observe

(Testimony of J. B. Londono.)

the wire under a microscope and just tested it for strength. [510]

\* \* \*

Q. (By Mr. Dasteel): Now, Mr. Londono, going back to the time that you received the exhibit No. 36 from Mr. Grinstein, the seven pieces of barbed wire, how was that handed to you, in a package or loose?

A. The samples were given to me in a piece of paper and checked them up.

Q. What did you do with this package, namely, the barbed wire samples that were in the piece of paper? Did you wrap it up in the same paper and tie it with string or just what did you do with it? [512]

\* \* \*

The Witness: On the 12th, on my way from Dulien's place after I signed the contract, Mr. Rendon and I stopped at some place, plumbing place——

The Interpreter: A plumbing establishment.

The Witness: Yes, in Fourth Street. (Speaking in Spanish.)

On my way from Dulien's place we stopped by a plumbing establishment on Fourth Street, in which place I knew an engineer to whom I showed the samples of the wire and told him of the transaction made, and showed him the contract, and he told me that it was satisfactory wire. [513]

\* \* \*



(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now when you left Dulien's with the wire, did you throw it in an automobile or keep it in your pocket? How did you carry the wire right when you left Dulien's?

A. (Through Interpreter): In his hand.

The Court: Wrapped in a piece of paper?

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): Then when you went to this plumbing establishment where you showed the engineer the wire and the contract, you unwrapped the package and you put it out on the table, did you, and showed it to him? A. Yes.

Q. Did he handle these various pieces?

A. Yes. [514]

Q. How long did that take?

A. (Through Interpreter): We were there about 15 minutes.

Q. How many people in the office handled these pieces of wire? A. One.

Q. You mean that you just handed it to this engineer? A. Yes.

Q. And he handed it back to you? A. Yes.

Q. Then who else did you show these samples to?

A. One day between the 12th of July—during July I showed the samples to Hunt's engineer.

\* \* \*

The Court: Go ahead and tell him. You gave it to an engineer. Hans you mean is his first name?

The Witness: No, an engineer that work for Hunt's.

(Testimony of J. B. Londono.)

The Court: That worked for Hunt's?

The Witness: Yes. [515]

The Court: Oh, an engineer at Hunt's.

The Witness: Yes. (Through interpreter): He made an examination of the wire, and he also found it satisfactory.

\* \* \*

Q. When was the next time you showed these samples of wire to anybody?

A. It was to Mr. Bunn, during August.

Q. When was the first time that you showed the wire, the samples we are speaking of, to Mr. Bunn?

A. I don't remember the date, Mr. Dasteel. It was about—(through interpreter) in the second decade in August, that is, between the 10th and the 20th. [516]

\* \* \*

Q. Then did you leave the samples with Mr. Bunn, after you showed them to him?

A. Yes.

Q. Now, since that time do you know if these samples were handled or examined by others?

A. No, I don't know.

Q. Not to your knowledge? A. No.

Q. Did you bring them with you into court or did Mr. Bunn?

A. Together. I put the samples on Mr. Bunn's brief case,—to the court.

\* \* \*

Q. (By Mr. Dasteel): You put them in Mr. Bunn's brief case? A. Yes.

(Testimony of J. B. Londono.)

Q. Where were they when you picked them up to put them in the brief case (interpreted)? [517]

A. (Through Interpreter): Mr. Bunn took them from his safe, and it was in his office.

Q. After Mr. Bunn took them from his safe, did you open up the package and handle the wire again before you brought it into court? A. Yes.

Q. How many times would you say you did that?

A. One time.

Q. Was anybody present when you did that?

A. No.

Mr. Bunn: You mean besides me?

Mr. Dasteel: Yes. [518]

\* \* \*

Q. (By Mr. Dasteel): Mr. Londono, now going back—I [519] must go back to the 11th, that is, the date we were just referring to when these people were present. When you left Dulien's office on the 11th, you had discussed the price and quantity of the wire, had you not?

A. Yes, and accepted. [520]

Q. Then you told Mr. Grinstein that you would like to buy it, is that right?

A. Yes. I accepted to buy the wire.

Q. And Mr. Grinstein said to you, "Well, we will have to wait and see what Mr. Dulien has to say," is that right?

A. We closed the deal that day to confirm it the next day in writing.

Q. Did Mr. Grinstein say anything to you that

(Testimony of J. B. Londono.)

day about Mr. Dulien coming in the following day, meaning July 12th?      A. No, Mr. Dasteel.

Q. You didn't know that Mr. Dulien then was coming in on the 12th?      A. No, sir.

Q. You have just stated, I believe, that you were 99 per cent sure that you did not get the samples until the 12th, is that right?      A. Yes.

Q. Now, you just stated that on the 11th you confirmed an arrangement with Mr. Grinstein that you would buy the wire and that he would sell it?

A. Yes.

Q. Then you agreed to buy the wire orally, that is, by word of mouth, prior to the time—when I say “prior” I mean before—you saw these [521] samples?

A. No. I accept to buy the wire when I had seen the rolls of wire which were shown to me and when they promised to give me samples of that same wire.

Q. Is it your understanding, Mr. Londono, that these samples were taken from the wire that you saw in the yard at Dulien's on the 11th?

A. Yes.

Q. And Mr. Grinstein and you were agreed that you would return next morning on July 12th and enter into a written contract, is that right?

A. Yes.

Q. Now you arrived on the 12th, and who was present?

A. I told you before, Mr. Grinstein, Mr. Tuthill, Mr. Stinson, Mr. Rendon and I.

Q. Mr. Dulien wasn't there at that time?



(Testimony of J. B. Londono.)

A. Not at that time.

Q. Then did you have a conversation again with Mr. Grinstein about this wire?

A. More or less the same conversation as the previous day.

Q. But I want to know what was said on the 12th.

The Court: He just answered: More or less the same.

Q. (By Mr. Dasteel): Any change at all in the proposed purchase of wire as to terms or price from the previous day? [522] A. No.

Q. Then Mr. Grinstein showed you Plaintiff's Exhibit 2, I believe it is, the sales order.

May I have that, Mr. Clerk?

(The document referred to was passed to counsel.)

Mr. Dasteel: Is there an original?

The Clerk: No. 2-A.

(The document referred to was passed to counsel.)

Q. (By Mr. Dasteel): Then, Mr. Grinstein handed you this document, entitled "Dulien Steel Products, Inc."? A. Yes.

Q. "Sales order No. LA-712"?

A. (Speaking in Spanish.)

Q. You understand me? A. Yes.

Q. Then you don't have to talk to the interpreter. You just answer.

He then handed you this?

(Testimony of J. B. Londono.)

A. Yes.

Q. Did you receive this and sign it before Mr. Dulien came to the office?      A. No.

Q. Did you receive this?

A. In Mr. Dulien's presence and I [523] signed——

Q. Just a minute.      A. Yes.

Q. Mr. Dulien was present when you were handed this sales order, is that right?

A. Yes.

Q. Now when this was handed to you, did you read it?      A. I suppose, yes.

Q. You do read English, don't you?

A. Yes. Not perfectly all right, but I read it.

Q. You read it?      A. Yes.

Q. Did you ask any questions of Mr. Grinstein or any member of the Dulien Steel organization that was present on that occasion regarding any of the matters set forth on this document?

A. No.

Q. You were quite satisfied with it, then?

A. (Through Interpreter): This I understood to be a confirmation of conversations on the 11th and 12th, and as I had confidence in the good faith of Dulien I didn't ask him to state that I have received samples as to quality.

Q. Did anyone connected with the Dulien organization discuss—that means talk about—or read anything set forth in writing on this document at that time?

(Testimony of J. B. Londono.)

The Interpreter: Would you state that [524] again?

Q. (By Mr. Dasteel): To make it plain, did any member of the Dulien organization talk about or read anything that is set forth in that document?

The Court: You mean aloud, read aloud?

Mr. Dasteel: Read aloud; yes.

The Court: In English, you mean?

Mr. Dasteel: In English; yes, your Honor.

The Witness: The only verbal conversation in connection was regarding the credit.

The Court: That is not an answer to the question. Did any member of the Dulien organization read that aloud to him in English before he signed it?

The Witness: No.

The Court: Did they read it to you in Spanish before you signed it?

The Witness: No.

The Court: Did you have a Spanish interpreter with you?

The Witness: Yes, your Honor.

The Court: Who?

The Witness: Mr. Rendon.

The Court: Did Mr. Rendon read it to you in Spanish?

The Witness: No, your Honor.

Q. (By Mr. Dasteel): Did you show this document to Mr. Rendon at that [525] time?

A. Possibly, yes.

Q. Was there any discussion at all between you

(Testimony of J. B. Londono.)

and any member of the Dulien organization regarding any of the matters set forth on this document at the time you signed it, either before or after or at the time?

A. There was no discussion whatever, only the statement I made regarding how credit would be opened.

Q. And by that you mean you did talk about the item set forth here under the subheading, "Terms"?

A. Yes.

Q. And you discussed that particular item there, which I shall read: "Letter of credit for \$160,000 now on deposit at Los Angeles Main Office of Citizens National Bank, subject of full draft on deposit of on board bills of lading, letter of credit for \$128,900 to be established on or before July 22, 1946, subject to draft on presentation of delivery receipts. Any railroad demurrage accruing due to non-establishment of letter of credit by July 22, 1946, will be for account of buyer." Is that what you talked about?

A. No. (Through Interpreter): The only verbal conversation was that the next day I would open——

Mr. Dasteel: Just a minute. What was that, the next day?

The Interpreter: Yes, the next day. [526]

Mr. Dasteel: What date, the 13th?

The Interpreter: That is what Mr. Londono said.

Mr. Dasteel: I don't understand it.

The Interpreter: Immediately. That I would



(Testimony of J. B. Londono.)

immediately open a letter of credit for \$160,000 now in the bank and several days afterwards I would open the credit for the balance which he mentioned, but I don't recall the figures.

The Witness: 128—— [527]

Q. Now, just a minute.

A. The 128,000——

Q. That discussion took place while you were referring to the subject in the sales order of letter of credit (interpreted).

A. (Through Interpreter): When Mr. Grinstein asked me how I was going to pay for the wire.

Q. Now, as a matter of fact, then you had this document in your hand and you read this matter here which I have just referred to, "Letter of credit," and you referred to this when you had this discussion regarding the letter of credit, did you not?

A. Yes.

Q. Then did you continue to read below?

A. I supposed to read everything.

Q. And you did? A. I suppose so.

Q. Did you not? A. I suppose so.

Q. But you do remember holding this and referring to the matter of letter of credit on there?

A. Yes, because Mr. Grinstein asking me how I going to pay, and I say I going to pay, I sign \$160,000 credit immediately and another credit for \$128,900 a few days later. [528]

Q. Then you talked about that item under the heading of "terms"? A. Yes.

Q. Did you talk about the heading "Commod-

(Testimony of J. B. Londono.)

ity?" Did you talk about that, where it says "Unused government surplus barbed wire as purchased by seller from Interior Department"? Did you talk about that? A. On the 11th.

Q. Now, just a minute. He can answer that "Yes" or "No." I want to know if he talked about that item (interpreted).

Mr. Hubert Morrow: You mean on the 12th?

The Witness (Through Interpreter): Mr. Grinstein told me that the wire was obtained from the government of the United States, and that it was unused.

The Court: No. Is that what he said on that day, after you showed him the document? What he wants to know is whether or not with that document in front of you, Mr. Grinstein asked you about what the words were on that paper.

The Witness: Not in front of the document. The day before.

The Court: He says, "Not in front of the document."

Q. (By Mr. Dasteel): But when you received this document, you had it in your hands?

A. Yes. [529]

Q. Or you laid it on the desk? A. Yes.

Q. And Mr. Grinstein was sitting there?

A. Yes, and Mr. Dulien.

Q. And Mr. Dulien, too? A. Yes.

Q. You just testified you discussed under the item of "Terms," namely, the letter of credit. Did

(Testimony of J. B. Londono.)

you talk about any other of these items in connection with this document?      A. No.

Q. That's all you talked about?      A. Yes.

The Court: Was the condition of the wire mentioned that day at all (interpreted)?

The Witness: Yes.

The Court: What was said?

The Witness (Through Interpreter): I asked Mr. Grinstein about the condition of the wire, and he said that Mr. Dulien had seen the wire, and that it was in good condition, and that Mr. Dulien said that he would like to buy 50,000 more tons, or something like that.

Q. (By Mr. Dasteel): Now, I want to learn from you, Mr. Londono, is there any conversation that took place at the time you received this document, either before you signed it or at the time you signed it? [530]

Mr. Bunn: But on the 12th?

Mr. Dasteel: On the 12th, yes. You didn't see this until the 12th, did you?

The Witness: Yes, the 12th.

The Court: He just told you a part of it. You want more?

Mr. Dasteel: I want to get all I can about it, as to what was discussed in connection with this document.

Q. (By Mr. Dasteel): Now, was anything said at this time regarding the last two lines, which read as follows:

“Acceptance of material subject to rejection by

(Testimony of J. B. Londono.)

buyer of not more than 300 net tons due to excessive weathering."

Did you talk about that?

A. No.

Q. Did you ask any questions about it?

A. No.

Q. Did anybody talk to you about it?

A. No.

The Court: You mean on that day?

Mr. Dasteel: On that day.

The Witness: No, your Honor.

The Court: Had you talked about that 300 tons right of rejection the day before?

The Witness: No, your Honor. [531]

Q. (By Mr. Dasteel): Then do you recall any conversation regarding your option to refuse 300 tons due to excessive weathering?

A. No, not at that time.

Q. But when you read this, didn't you ask about it? If you hadn't discussed it before, when you read this, didn't you make any inquiry as to what was meant by that? A. No.

Q. Well, you took no action on it? A. No.

Q. But you knew it was there?

A. I supposed to read, but I—(through Interpreter) I didn't think that this contract would change any of the conditions and terms set forth in our conversation of the 11th above.

Q. What was the price quoted the day before, namely, July the 11th, by Mr. Grinstein,—how much a ton? A. \$108 a ton.



(Testimony of J. B. Londono.)

Q. \$108. And did you agree to pay \$108 a ton?

A. \$107 a ton.

Q. All right. That was on the 11th?

A. On the 11th.

Q. Now, the next day, the 12th, when you were presented with this document, did you notice the price here of \$107 a ton? [532]

A. Of course, yes.

Q. And you checked and that was all right?

A. Oh, yes.

Q. And did you notice the specifications shown on this order? Is that the same specifications? You checked that, did you not?

A. (Through Interpreter): Possibly, yes.

Q. You checked the quantity on this, did you not?

A. Yes. (Through Interpreter): The basic points of the contract were that it was galvanized wire, and it was 12½ gauge, and so forth.

Q. I know. I just asked him if he checked that on this contract. Now, the price shown on this contract is \$107 per ton, is it not? A. Yes.

Q. Now, if that had appeared as \$137 per ton, you would have made some objection to it, would you not? A. Of course, yes.

Q. All right. But the other parts of the contract, namely, the last two lines, "Acceptance of material subject to rejection by buyer of not more than 300 net tons due to excessive weathering,"—you didn't question that at all? A. Yes.

Q. "Yes" or "No." [533]

(Testimony of J. B. Londono.)

A. (Through Interpreter): I didn't put any attention on that particular part there.

Q. Is it possible you may have at the time, but now you don't remember?

Mr. Bunn: I object to that. That is a paradoxical question, and it calls for a conclusion. It asks him if something happened which he does not now remember. If he remembers it, then the question falls of its own weight. If he does not remember, then he cannot say it happened.

Mr. Dasteel: He was only 99 per cent sure that he got the samples on the 12th.

The Court: Objection overruled. Read the question.

(The question was read.)

The Court: That you may have said something about the 300 tons?

The Witness (Through Interpreter): I cannot say that I remember it.

Q. (By Mr. Dasteel): That is your signature, is it not? A. It is, yes.

Q. What did you do with this document, or the original duplicate copy which was given to you after you received it?

A. (Through Interpreter): I put it away some place in my possession until the 26th or 27th, when I turned it [534] over to Mr. Schroeder to ask him for the credit.

Q. Before you showed it to Mr. Schroeder, did you show it to anyone else? A. Yes.

(Testimony of J. B. Londono.)

Q. Who?

A. (Through Interpreter): To the man on 4th Street in the plumbing establishment, the engineer.

Q. Did you have any discussion with him regarding the various items set forth on this document?

Mr. Bunn: Just answer "Yes" or "No," please.

\* \* \*

The Court: Mr. Londono, the question is, "Did you have a conversation with this man?"

The Witness: Yes, sir.

The Court: About that document?

The Witness: Yes, your Honor.

\* \* \*

Q. (By Mr. Dasteel): Now, in this conversation with this [535] man, did you talk about the various specifications in the items set forth on this document?

\* \* \*

(The question was interpreted.)

The Witness (Through Interpreter): No, it was that we spoke about the quantity of the wire that was to be sent to Colombia, but we did not discuss any of the technicalities of the contract. [536]

\* \* \*

Q. After you left Dulien's office then you went with Mr. Rendon to the plumber and you showed it to the engineer at the plumbing establishment, and then the next time you revealed or showed this document to anyone was when you took it to the bank and presented it to Mr. Schroeder?

(Testimony of J. B. Londono.)

A. Yes, sir.

Q. Now, when you presented this to Mr. Schroeder, did you engage in a conversation and talk about any of the items shown on this sales order?

\* \* \*

The Witness: I don't remember to have any particular conversation with Mr. Schroeder about the document. I remember I gave him the document and I told him I bought from Dulien the wire. [538]

Q. (By Mr. Dasteel): Did Mr. Schroeder ask you any questions regarding this document?

A. Not that I remember, Mr. Dasteel.

Q. Did you leave it with Mr. Schroeder?

A. Yes, the 26th or 27th of July. [539]

\* \* \*

Q. Now, we have you at the bank with Mr. Schroeder, and I believe you entered into negotiations with him for a letter of credit. [540]

A. Yes.

Q. Then you testified that thereafter, on July 27th, you went to Dulien's office and delivered a copy of the letter of credit to the Dulien Company, is that right?

A. The original letter of credit?

Q. The original letter of credit. A. Yes.

Q. Who did you give it to, Mr. Stanley or Mr. Grinstein? A. I gave it to Mr. Grinstein.

Q. Did you have any conversation with him when you handed him a letter of credit?

A. Yes.



(Testimony of J. B. Londono.)

Q. What did you say?

A. I delivered to him the letter of credit and after he saw the letter of credit, he accepted, and I asked him for an option of 300 tons of barbed wire—(through Interpreter) I asked for an option on the balance of 300 tons of barbed wire.

Q. Now, Mr. Londono, first tell me——

The Court: Apparently he has not finished his answer.

Mr. Dasteel: Pardon me.

The Witness (Through Interpreter): I gave him the letter of credit. We talk about the wire going to South America, and I told him that I had done a very good business—— [541]

The Witness (In English): No. Excuse me. Big business.

The Interpreter: It was big business.

The Court: That that was big business for you?

The Witness: Yes, the amount of business.

The Interpreter: And he told me also that for him had been big business, and he mentioned at the time that he had bought the wire from the government at \$28 a ton.

Q. (By Mr. Dasteel): Was that the first time that you learned that Dulien had purchased this wire from the government at \$28 a ton?

A. I think it was the first time I knew for sure.

Q. When did you first know about the fact that this wire was purchased by Dulien for \$28 a ton? Was it last Monday or last week or a year ago?

The Court: He just got through answering that.

(Testimony of J. B. Londono.)

He said he thinks that is the first time he learned of it for sure.

Q. (By Mr. Dasteel): Is it your statement that on July 27, 1946, that Mr. Grinstein told you that Dulien had bought that wire for \$28 a ton?

A. Yes.

Q. You did not make that statement in your deposition that was taken on April 6, 1948. Have you remembered that since that time? [542]

Mr. Bunn: Was he asked any such question?

Mr. Dasteel: He was asked all of the conversation at that time, not only by myself but by other counsel.

The Court: Show him the questions in the deposition. That is not the way to impeach him.

The Witness: Mr. Dasteel — excuse me, your Honor.

The Court: There is no question pending. Objection sustained.

The Witness: At one time in the deposition——

Mr. Bunn: Just a moment. There is no question, unless you are answering the last one that he made.

Mr. Dasteel: If the witness would like to add something to his last answer, I would like him to do so.

The Court: Very well.

The Witness: In one time during my deposition two years ago I said that my Colombian friend, Hector Silva Herrera, mentioned to Mr. Fosvett in the bank the price of \$28. In other words, I stated

(Testimony of J. B. Londono.)

the fact that the wire had been bought for \$28 a ton.

Q. (By Mr. Dasteel): With further reference to your conversation with Mr. Grinstein on July 27th and the 11th and 12th, prior to that time you were told, were you not, that this wire was purchased from the government?

The Court: Let me have that question. [543]

(The question referred to was read by the reporter as follows:

“Q. With further reference to your conversation with Mr. Grinstein on July 27th and the 11th and 12th, prior to that time you were told, were you not, that this wire was purchased from the government?”)

Mr. Dasteel: I will reframe it and make it clear.

Q. On July 11th and 12th and at any other time that you discussed this barbed wire with Mr. Grinstein, you were told that it was unused government barbed wire as purchased from the government, were you not?

Mr. Bunn: I object to that question. It is compound as to the dates to which it applies.

Mr. Dasteel: I will withdraw it to save time. I will ask it this way:

Q. Did Mr. Grinstein at any time tell you that the wire you were purchasing was unused barbed wire as purchased from the government?

A. (Through Interpreter): He didn't tell me

(Testimony of J. B. Londono.)

all those words, but he stated that it had been bought from the government.

Q. Now, on July 11th, did Mr. Grinstein on that date tell you that the wire he proposed to sell to you was unused government surplus barbed wire?

A. Not in particular. The negotiation was based on the [544] samples and also on the fact that it was purchased from the government.

Q. He told you on the 11th that this wire was coming from Honolulu? A. Yes.

Q. And that it was purchased from the United States Government, did he not? A. Yes.

Q. And he told you it was unused wire, did he not? A. Obviously, yes.

Q. Did he tell you how long the wire had been in storage at Honolulu? A. No.

Q. Did you ask him? A. No.

Q. Did you inquire at all about the age of the wire? A. No. [545]

Q. When did you first see some of the wire that was unloaded from the White Squall?

A. It was in the afternoon of July 29th, at Long Beach Pier 1-A.

Q. And was that—

The Court: I think we might have the afternoon recess.

(A short recess was taken.)

Q. (By Mr. Dasteel): Mr. Londono, I believe the last question was when did you first see any of the wire that was unloaded from the steamer



(Testimony of J. B. Londono.)

White Squall, and I think your answer was July the 20——

A. The 29th, in the late afternoon.

Q. When was the next time you saw any of the wire that was unloaded from the ship, the White Squall?

A. The next day.

Q. That was the 30th?

A. Yes.

Q. Did you go to the Citizens National Bank on the 31st of July?

A. Yes, sir.

Q. Referring to Plaintiff's Exhibit No. 11, which is the letter dated July 31st addressed to the Citizens National Trust & Savings Bank, I show you——

The Court: It has an exhibit number.

Mr. Dasteel: Yes, Exhibit No. 11. [546]

The Court: Oh, you did say that. I am sorry.

Mr. Dasteel: Yes, your Honor.

Q. (By Mr. Dasteel: I believe you testified that you wrote that letter and signed it and that is your signature; is that correct?

A. Yes, it is correct. (Examines letter.) Yes.

Q. And this contains an order, does it not, to make shipment of 1500 tons of barbed wire to Buenaventura, Colombia?

A. Yes.

Q. And 500 tons to Roldan y Cia., at Cartagena?

A. Yes.

Q. And you wrote this letter after you had seen some of the wire that was unloaded; isn't that correct (interpreted)?

A. After I saw a small quantity of the wire, and which wire was not identified as the one that was going to be assigned to me.

(Testimony of J. B. Londono.)

Q. Isn't it true that you testified that on July 30th, which was a Tuesday, you took some wire-cutting pliers down to the dock and took several samples of the wire, which you saw on the dock?

A. Yes.

Q. And the samples that you took you understood were from this wire, were they not (interpreted)? Ask him to [547] answer "Yes" or "No."

A. (Through interpreter): At the time Mr. Rendon took the samples, we didn't know whether the wire was going to be for us, or whether it was going to be for Gonzales and Blanco, and for that reason we did not use them.

Q. Do you still have the samples of wire which you stated you took from the dock, that we just talked about?      A. No.

Q. What did you do with them?

A. (Through Interpreter): Mr. Rendon had them in his car, and probably they just slipped away, because they didn't use them.

Q. Now, on July 31st, after you wrote the letter which is Plaintiff's Exhibit No. 11, which I have just referred to, you left that with the Citizens National Bank, or did you mail it? I show you the letter again.

A. Yes, I left it in the bank. I signed it in the bank and left it at the bank.

Q. You left it at the bank?      A. Yes.

Q. Whom did you leave it with? What is the name of the person in the bank that you left it with?

(Testimony of J. B. Londono.)

A. Mr. Schroeder or Mr. Powers in the Foreign Department.

Q. You don't remember which one? [548]

A. Probably Mr. Schroeder.

Q. Mr. Schroeder. Did you have any conversation with him at the time that you handed this letter to him? Did you say anything?

A. Not in particular. (Through Interpreter): He dictated the letter and asked me to read and to sign.

The Court: He dictated the letter?

The Witness: Yes.

Q. (By Mr. Dasteel): Did you read it after he dictated it? A. Yes.

Q. And did he say anything about the contents of this letter? A. Not that I remember.

Q. When I say "he" I mean Mr. Schroeder.

A. Not that I remember, Mr. Dasteel.

Q. What did you do then, after you handed this—signed this and handed it to Mr. Schroeder that day?

A. During that time in the bank?

Q. Yes, right then and there.

A. I made several things. I signed this letter. I signed a promissory note to the bank. I got from Mr. Schroeder the check for \$54,000 and more dollars. I received from Mr. Schroeder another letter.

Mr. Diether: What? [549]

The Court: Another letter.

The Witness: And a commercial invoice for 2,000 tons of barbed wire, and maybe I received

(Testimony of J. B. Londono.)

from him in the presence of Mr. Sweeney—in Mr. Sweeney's presence the bill of freight, which document at that time we called bill of lading. [550]

Q. Now did you give any instructions to Mr. Sweeney at that time about shipping some of this wire on the 31st?

The Court: You mean oral instructions?

Mr. Dasteel: Yes, orally.

The Court: Is not that the letter to Mattoon & Company?

Mr. Dasteel: No, this is not to Mattoon & Company, your Honor; this is to the bank.

The Witness: I repeated the instructions that I have given to Mr. Sweeney regarding the wire on the 29th, all of which I have given to the bank in the same sense.

Q. (By Mr. Dasteel): You repeated it to Mr. Sweeney, you told him to proceed with the shipment of this wire then?

A. I didn't tell him to stop the shipment, so obviously I told him to proceed with it.

Q. That was on the 29th and the 31st, too?

A. The 31st.

Q. But you said you already had given Mr. Sweeney some instructions on the 29th.

A. Yes, I asked him several times before to make the booking space.

The Court: Booking space on a steamer?

The Witness: Yes.

Q. (By Mr. Dasteel): Then you confirmed



(Testimony of J. B. Londono.)

these instructions with Mr. [551] Sweeney that you gave to the Citizens Bank in writing?

A. Yes.

Q. Now on August 1st—I show you Plaintiff's Exhibit No. 23—on the letterhead of J. B. Londono, dated August 1, addressed to Dulien Steel Products, Inc. Do you recall sending and signing that letter?

A. Yes.

Q. I draw your attention to the last paragraph which reads: "If the balance of the lot is in similar condition when discharged I must request the opportunity to renegotiate the original price paid for this merchandise." Do you recall writing that?

A. Yes.

Q. Now you asked for the opportunity to renegotiate, and then thereafter you met Mr. Grinstein at the ship and he agreed with you, he said, yes, you should have an opportunity to renegotiate, did he not?

A. Yes.

Q. Did you make any request thereafter for a renegotiation?

A. Yes.

Q. When?

A. During the month of August, and he refused.

Q. What time? What date in August?

A. I can't remember, Mr. Dasteel, but I am quite sure [552] it was in August.

Q. Was it the date that Mr. Grinstein used those famous words, "You have the wire, we have the money"?

A. No, it was another day. I don't remember.

Q. Was it before or after?

(Testimony of J. B. Londono.)

A. It was before. And he refused and he say because Gonzales and Blanco had picked the best wire.

Q. Did you make any written request after August 1st to renegotiate? A. No.

Q. Do you know what the meaning of the word "renegotiate" is? A. Yes.

Q. What does it mean, in your opinion?

A. In Spanish they speak of— (through Interpreter) it speaks for itself. In Spanish the word speaks for itself. To negotiate over again.

Q. To negotiate over again? A. Yes.

Q. That was your understanding then of that word? A. Yes.

Q. Now, Mr. Londono, when was the first time that you inquired about the original bill of lading?

Mr. Diether: From whom? [553]

Q. (By Mr. Dasteel): And from whom?

A. It was after the 24th of August.

Q. Was that after the date that you discovered you made a bad bargain in connection with the purchase of this wire?

Mr. Bunn: I object to that. I think that calls for a conclusion.

The Court: Sustained.

Q. (By Mr. Dasteel): When did you first realize or come to the conclusion that you had made a bad bargain in connection with the purchase of this wire?

Mr. Bunn: Just a moment. I object to that question. It calls for a conclusion and it is ob-

(Testimony of J. B. Londono.)

viously an attempt to get the witness to commit himself.

The Court: Objection sustained.

Q. (By Mr. Dasteel): Is it your contention that you did make a bad bargain in connection with the purchase of this wire?

Mr. Bunn: Same objection.

The Court: Same ruling; sustained.

Q. (By Mr. Dasteel): Is it your contention then that you made a good bargain in connection with the purchase of the wire? [554]

Mr. Bunn: I object on the same ground, and his contentions are set out in the complaint.

The Court: Objection sustained.

Q. (By Mr. Dasteel): Now you stated you first asked something about the original bill of lading on August 24th. Was that the date?

A. After August 24th.

Q. And who did you ask about it?

A. I was at Matson office in Wilmington—

The Court: Matson Navigation Company in Wilmington?

The Witness: Yes—asking for the documents relating to the shipment of the barbed wire. I was not asking to obtain the bill of lading, but I asked to see the bill of lading in order to know if some exceptions were marked. I was asking for the bill of lading not to obtain possession of the document, but to observe whether or not a notation or exception had been written on it.

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): What circumstances prompted you to make an inquiry for the bill of lading?

The Court: From Matson?

Mr. Dasteel: From anybody.

Q. What aroused your desire to see a bill of lading?

A. The document I had in my hands was the freight bill and had no notation whatever, and I wanted to find out if the [555] bill of lading or the documents regarding the shipment had such a notation.

The Court: What made you think the bill of lading was at Matson's Wilmington office?

The Witness: Because Mr. Sweeney told me and suggest to me to go there to find it. I was with Mr. Sweeney at that time.

The Court: Did you go to the bank first?

The Witness: Oh, yes. I was in the bank the next day, your Honor, the 24th of August, and I saw Mr. Moran and asked him about the other documents.

The Court: That was the time you learned the bank had not gotten the bill of lading?

The Witness: Yes.

The Court: Or were advised the first time?

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): Did you have a discussion with Mr. Sweeney—when I say a “discussion” I mean did you talk to Mr. Sweeney—at that time about the bill of lading and, if so, what did you



(Testimony of J. B. Londono.)

say to him and what did he say to you about it?

A. Yes. In the morning of the 24th of August I went into Mattoon's office and asked Mr. Sweeney if he received from the bank other document different than the bill of freight that I show him in that occasion, and he told me [556] that the bill of freight is supposed to be the bill of lading and it was the only document received from the bank.

Mr. Diether: May we make a motion to strike that answer as not affecting the bank, hearsay testimony, purely between Mr. Londono and Mr. Sweeney.

The Court: You can reserve your right to strike it. [557]

Q. (By Mr. Dasteel): Did you inquire of Mr. Sweeney how he was able to secure possession of some of the wire for reshipment to Colombia, and what document he used to hand to the Matson Navigation Company to take delivery of some wire?

A. No.

Q. Did he tell you, or do you know?

A. No.

Q. You did instruct Mr. Sweeney to handle a reshipment of some of this wire to Colombia, did you not? A. Yes; all the wire.

Q. All the wire. When was the first shipment made?

Mr. Bunn: You mean when did the boat leave?

Mr. Dasteel: Yes, that is one date.

(Testimony of J. B. Londono.)

The Witness: Yes. I think August 20th, 112 tons.

Q. (By Mr. Dasteel): What date did Mr. Sweeney remove some of the wire from the docks for shipment to Colombia?

A. It was about the 31st of July.

Q. About the 31st of July that they took physical possession of some wire and removed it from the dock for reshipment?

A. To Moore-McCormack Lines, yes, sir.

Q. Now, do you know what document or documents Mattoon & Company used to hand to Matson Company for the purpose of getting delivery of the wire at this time? A. No. [558]

The Court: Do you know whether or not they handed any documents to Matson Company?

The Witness: No, your Honor.

The Court: Did you ever receive any other document—Strike that. Did you give the commercial bill of lading—the commercial invoice to Mattoon & Company?

The Witness: No, your Honor. It was unnecessary.

Q. (By Mr. Dasteel): Now, you stated you were at the Citizens National Bank on July the 29th? A. No.

Q. Did you talk to Mr. Glenn Powers there at that time?

Mr. Bunn: On July 29th?

Mr. Dasteel: Yes.

Mr. Bunn: He didn't so state.

(Testimony of J. B. Londono.)

The Witness: July 31st.

Q. (By Mr. Dasteel): Were you in the bank on July the 29th? A. No.

Q. Were you in the bank on the 30th?

A. No.

Q. Were you in the bank on the 31st?

A. Yes.

Q. I show you Plaintiff's Exhibit 8-A on the letterhead or form of the Citizens National Bank. Said document [559] is dated July 29, 1946, addressed to J. B. Londono, and at the bottom there is a rubber stamp which reads, "Received from Citizens National Trust & Savings Bank of Los Angeles the within described enclosures," and there is a signature there that looks to me like "Londono." Will you tell me if that is your signature?

A. Yes, it is.

Q. When did you sign that?

A. It must be the 31st of July, when I went to the bank. I was not in the bank before the 31st.

Q. Then it is possible, of course, that this was typed up, and you signed it when you came in on the 31st? A. Yes.

Q. All right. Now, did you read this document when you received it? A. I suppose I did.

Mr. John Morrow: I am sorry. We can't hear you back here.

The Court: "I suppose I did."

Q. (By Mr. Dasteel): I call your attention to the fact that there is set forth there, "1 bill of

(Testimony of J. B. Londono.)

lading," and a star against the number 1, and a statement to the effect, "This payment has been made against the following documents which we enclose," and it says, "1 bill of lading" and "1 invoice evidencing shipment of: 2,000 tons Barbed [560] Wire." You recall signing and receiving a copy of this document, do you not?

A. Yes, and I remember——

Mr. Hubert Morrow: Pardon me. What was that question—signing?

Mr. Dasteel: Signing and receiving.

Q. (By Mr. Dasteel): What were you going to say about the bottom there?

A. And the last part of the letter, the asterisk, so marked, shows "Documents marked"—asterisk—"have been delivered to Mattoon & Co., as per your instructions and attached receipt."

The Court: Will the reporter read the answer, please?

(The answer was read by the reporter.)

Q. (By Mr. Dasteel): Now, at the time you signed this, did you make any inquiry regarding the bill of lading as set forth here, which the document states has been delivered to Mattoon & Company?

A. No.

Q. Then on that same day did you also receive your freight bill marked "Paid"?

A. Mr. Sweeney or I——

Q. You?

A. ——take the bill of freight, which was sup-



(Testimony of J. B. Londono.)

posed to be the bill of lading from Mattoon office.

We came to the bank. [561]

Q. I have got you to the bank already. I just want to know if you received a freight bill on the 31st.

Mr. Bunn: Let him answer. He is answering you.

The Court: Go ahead.

The Witness: We come to the bank, Mr. Sweeney and I, with the possession of the document that we call the bill of lading.

The Court: Which was the freight bill?

The Witness: The freight bill. Mr. Sweeney or I delivered the document to Mr. Schroeder, and after he required to get the endorsement from Dulien. He handed the document to me or Mr. Sweeney. In other words, we come to the bank with the document. We left the bank with the document after Mr. Schroeder required to have the endorsement.

Q. (By Mr. Dasteel): That was on the 31st?

A. The 31st.

Q. And you previously testified, I think, that on the 29th Mattoon & Company had already removed some wire from the dock?

A. Not the 29th. The 31st.

The Court: By the way, who typed that legend on the back of the bill of freight at Dulien's office? Mr. Sweeney?

The Witness: Mr. Stanley.

(Testimony of J. B. Londono.)

The Court: Mr. Stanley?

The Witness: Mr. Stanley in person. [562]

The Court: Mr. Stanley.

The Witness: Yes, your Honor.

Q. (By Mr. Dasteel): That was done in the office of Dulien, though? A. Yes.

The Court: And when Mr. Moran phoned you about the documents, did he tell you that Mr. Stanley was there?

The Witness: No, your Honor.

The Court: At the bank?

The Witness: No, your Honor. He say that "We have the documents from Dulien."

The Court: Oh, all right.

Q. (By Mr. Dasteel): Now, you also testified that you went to the Moore-McCormack pier to see some wire "that the day before we ordered removed from the Long Beach dock." That was July 30th, the day before. In other words, you went there on July 31st and saw the wire, and Mr. Sweeney accompanied you, and you told him to go ahead and ship it; is that right?

Mr. Bunn: I object to the question. It is entirely too comprehensive, and so much so that it is not understandable.

Mr. Dasteel: All right. I will withdraw it and I will put it in another way.

The Witness: Mr. Dasteel, I will ask you to make a short [563] question.

Mr. Dasteel: That is, I will ask another question.

(Testimony of J. B. Londono.)

The Court: The witness says, "Mr. Dasteel, I will ask you to make a short question."

Mr. Dasteel: A short question. [564]

Q. (By Mr. Dasteel): Did you go to the Moore-McCormack Pier on July 31? A. Yes.

Q. Was Mr. Sweeney with you? A. Yes.

Q. And did you see some wire there at that time? A. Yes.

Q. And did you tell Mr. Sweeney you shipped some of it to South America?

A. I say Mr. Sweeney, "Stop"——

Q. No. Wait a minute. I am just asking this question: Did you tell Mr. Sweeney to ship some of the wire to South America? You can answer that yes or no, I am sure.

The Court: Some of what wire?

Mr. Dasteel: Some of the wire that he purchased from Dulien that was on the dock.

The Witness: The first time I say "stop."

Mr. Dasteel: No——

The Witness: Yes.

The Court: That is on July 31?

The Witness: On July 31, when I saw the wire on the Moore-McCormack dock I said to Mr. Sweeney, "Stop. Don't ship that wire to Colombia."

But later on I asked him to order to segregate this wire and take the less bad and ship to Colombia. [565]

Mr. Dasteel: Will you read that answer, please?

(Testimony of J. B. Londono.)

(The answer referred to was read by the reporter as follows: "A. On July 31, when I saw the wire on Moore-McCormack dock I said to Mr. Sweeney, 'Stop. Don't ship that wire to Colombia.'")

"But later on I asked him to order to segregate this wire and take the less bad and ship to Colombia.")

The Court: You mean later that day?

The Witness: Yes, your Honor, maybe on our way to the office.

The Court: Very well.

Q. (By Mr. Dasteel): Did you at any time after July 31 consent or instruct—

Mr. Bunn: Which one?

Mr. Dasteel: Either.

Mr. Bunn: Will you ask them separately, please?

Q. (By Mr. Dasteel): Did you at any time after July 31 instruct Mattoon & Company to ship some wire subsequent to the time you told them to stop?

A. I told him to ship the wire when it was segregated, separated. [566]

Q. Then your answer is yes, you did tell him to ship some wire after you had previously told him to stop?      A. Yes.

Mr. Dasteel: May I see Plaintiff's Exhibit No. 25, please?

(The document referred to was passed to counsel.)



(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now you testified that a Mr. Hector Silva Herrera, a Colombia lawyer, was here in Los Angeles with you? A. Yes.

Q. On what occasions did he accompany you in connection with the purchase of this wire?

A. August 1, 1946, I informed to him about my transaction and—yes, and so on.

Q. Did he go with you to the bank?

A. He went with me to the bank several times.

Q. How many times did he go with you to the bank?

Mr. Bunn: To the bank?

The Witness: No, to the dock first.

Q. (By Mr. Dasteel): Oh, you are going to tell me occasions? A. Yes.

Q. Start all over again then.

A. He was in the Hotel Clark at the time I was there.

Q. Where? [567]

The Court: Hotel Clark.

The Witness: And he was Colombian, we were friends, and I talked to him about the transaction of the wire, and he and I and Mr. Rendon used to go to the dock to see the wire.

Q. (By Mr. Dasteel): How many times did Mr. Herrera go with you to the dock to see the wire?

A. I believe three times.

Q. What were the dates, do you recall?

A. I recall the first of August because I show him the copy of the letter I wrote to Dulien and

(Testimony of J. B. Londono.)

he asked me to take him to the dock to see the wire.

Q. Then did he go to the bank with you?

A. A few days later he went to the bank with me and talked to Mr. Fosvett.

Q. Mr. Herrera talked with Mr. Fosvett?

A. Yes.

Q. Did Mr. Herrera ever go out to Dulien's office with you?      A. No, I don't remember.

Q. Did Mr. Herrera ever talk to your attorney, Mr. Bunn?

A. No, not that I remember. Mr. Bunn, can you help me?

\* \* \*

Q. I believe you testified that in the early part of August or between—let us put it between August 10 and August 21—you were engaged in a sales campaign in order to sell the wire which you purchased from Dulien, is that correct?      A. Yes.

Q. And were you successful in selling any of the wire between those dates?      A. No.

Q. How much of the wire had you sold before August 10th?

A. I sold since July 1000 tons to Mr. Echavarria.

Q. That was before August 10th. Now after August 21st, how much of the wire did you sell? Do you recall? You stated you didn't sell any between the 10th and the 21st of August, and you have already testified what you sold to Echavarria before August 10th. Now what I want to know is

(Testimony of J. B. Londono.)

how much of the wire you sold after August 21st.

Mr. Bunn: You mean in this country or South America?

Mr. Dasteel: Any place. Sold. I don't care where he sold it.

The Witness: Mr. Dasteel, may I explain to you? The 1000 tons of wire it was sold before this transaction. [569]

Mr. Dasteel: You haven't answered my question.

Mr. Bunn: He is trying to explain an answer that he has given heretofore and I think he is entitled to do that.

The Court: Do you want to explain a previous answer?

The Witness: Yes, your Honor.

The Court: Very well. Go ahead.

The Witness: The 1000 tons of wire I sold before this transaction, this Dulien transaction. Then in order to complete that transaction I ordered to ship 1000 tons to Mr. Echavarria.

Q. (By Mr. Dasteel): You sold 1051 tons before August 10, is that right?

A. And before I buy the wire from Dulien. I sold 1000—

Q. I am talking about this particular wire that you purchased from Dulien. Now you sold 1051 tons before August 10, did you not?

Mr. Bunn: That isn't what he said.

The Witness: I sold 1000 tons of wire to Mr.

(Testimony of J. B. Londono.)

Echavarria before August 10 and before [570] July 11.

\* \* \*

Mr. Dasteel: You mean he sold it before he had it?

Mr. Bunn: He has already said he was under contract to deliver it and he got it from Dulien and he had to send a thousand tons. He has been very clear about it.

The Court: There is no question pending.

Q. (By Mr. Dasteel): I am trying to find out how much you sold after August 21st, that is all.

The Court: After August 21st how much he sold?

Mr. Dasteel: How many tons.

The Court: And shipped?

Mr. Dasteel: And shipped, yes.

Mr. Bunn: If you will distinguish between selling in this country and shipping to South America he will understand you perfectly.

Mr. Dasteel: He can split it up. He can tell me how many tons were sold in Los Angeles and how many on the outside.

The Court: How many tons did you ship after August 21, do you remember?

The Witness: May I make some figures, your Honor? It was 1051 tons less 112 tons.

The Court: In other words, you shipped 112 tons before August 21st?

The Witness: Yes, your Honor. [571]

Q. (By Mr. Dasteel): You sold altogether, did



(Testimony of J. B. Londono.)

you not, 2000 tons less your alleged shortage of 81 tons, isn't that right?

Mr. Bunn: Read that again to him, please.

(The question referred to was read by the reporter as follows: "Q. You sold altogether, did you not, 2000 tons less your alleged shortage of 81 tons, isn't that right?")

The Witness: And less the small quantities that were lost in moving and the four coils that are now in the court. [572]

\* \* \*

What you want to know is whether or not the witness knows how much wire was lost in the process of moving?

Mr. Dasteel: Yes, that is right.

The Court: Do you know that?

The Witness: Yes. 4.9 tons. About 5 tons.

Q. (By Mr. Dasteel): About 5 tons?

A. Yes.

Q. That was in the moving? A. Yes.

Q. Now do you know how much was lost in the pickling process?

The Court: If any.

Q. (By Mr. Dasteel): Yes, if any.

A. The 5 tons I told you before included all.

Q. The 5 tons covers it all? A. Yes.

Q. When did you first learn that all of your wire had [573] been removed from the dock, from the Matson dock?

(Testimony of J. B. Londono.)

A. I don't know the date. I don't remember. Mr. Gonzales and Mr. Bunn had the records.

Q. Did Mr. Sweeney of the Mattoon Company or anybody from the Mattoon Company, who were your shipping agents for you, inform you to the effect that—well, we have picked up all of the wire that we could find on the dock and have shipped it for you? A. No, Mr. Dasteel.

Q. When did you finally come to the conclusion that the wire that was available to you on the dock had all been removed or sold?

A. I was absent in Colombia when that took place so I don't know.

Q. When you came back from Colombia, did you go and see Mattoon & Company—I presume that is Mr. Sweeney that you always talked to in that company, is that right, Mr. Sweeney?

A. Yes, I saw Mr. Sweeney.

Q. Did you see Mr. Sweeney and have a conversation with him?

A. Yes, I had a conversation with him about a portion of barbed wire that existed at that time at the Moore-McCormack Dock.

Q. You saw Mr. Sweeney at the Moore-McCormack Dock? [574]

A. No, I saw Mr. Sweeney and he told me about a quantity of barbed wire supposed to be 30 tons existing at Moore-McCormack Line Dock.

Q. Did he say it was your wire?

A. He asked me to go there and to identify because the record, the documents, letter between

(Testimony of J. B. Londono.)

Matson and Mattoon & Company indicated that that wire was part of the wire purchased from Dulien.

Q. What did you tell him about it?

A. I was there and I saw the wire, and Mr. Sweeney told to me that the dock charges would be about \$700, which amount Moore-McCormack Lines will agree to forget about if we ship the wire to anywhere. [575]

Q. Did you look at the wire at that time?

A. Yes.

Q. How much was there?

A. Supposed to be 30 tons, but at the time of the shipment, after I saw the documents, I knew that there was 477 coils, 100-pound coils, and that is equal about 24 tons.

Q. Was this wire stored in the open, or was it in a warehouse?

A. In open place.

Mr. Diether: Where was it?

The Court: "In open place."

Q. (By Mr. Dasteel): Was it protected by a fence and a gate, or could anybody go in there and look at it (interpreted)?

A. (Through Interpreter): It was in an open place. It had no particular protection.

Q. It had no protection?

The Court: No particular protection.

Q. (By Mr. Dasteel): It had no particular protection. Did you have a watchman at any time guarding your wire?

A. No.

(Testimony of J. B. Londono.)

Q. That was when you came back from Colombia, wasn't it? A. Yes, April, 1947.

Q. What date? [576] A. April, 1947.

Q. April, 1947. Now, going back to August the 12th, you stated that you went to Pier 1-A in Long Beach and saw a Mr. Swanson from the firm of Toplis & Harding—that is correct, isn't it?

A. About the 12th.

Q. You said on the 12th. And you said to him at that time, and I read from your own testimony, "I, myself, told Mr. Swanson that I was the owner of the wire." Do you recall testifying to that?

A. Yes, because I pay for it and I know the bank paid for me.

\* \* \*

Q. (By Mr. Dasteel): Well, I believe you testified the first time that you raised the question of receipt of an original bill of lading was on August the 23rd, was it?

\* \* \*

The Court: That was when he talked to somebody who told him it was a freight bill and not a bill of lading. [577]

\* \* \*

The Witness: Koppel.

Q. (By Mr. Dasteel): What date was that, again? A. The 23rd of August, afternoon.

Q. The 23rd of August. Now, the next day was the 24th, and you had a conference with Mr. Moran at the bank? A. Yes.



(Testimony of J. B. Londono.)

Q. And you showed him the freight bill?

A. Yes.

Q. And asked him if he paid the credit to Dulien against that document?

A. Yes, I asked him that.

Q. That was your statement. Now, what did you tell him? What did he tell you, rather (interpreted)?

A. He told me that he paid the credit against the other document, a larger piece of paper.

The Court: That is "other document," Miss Reporter.

Mr. Diether: Did the witness respond then?

The Court: He said, "other document." It sounds like "all the document." It is "other document."

Q. (By Mr. Dasteel): Now, I show you Plaintiff's Exhibit No. 7, entitled "Original Freight Bill." Now, you [578] stated that Mr. Moran said that he paid on a document a little larger than that?

A. Yes, larger.

Q. And—— A. He don't say——

Mr. Bunn: Wait. Just finish your answer.

The Witness: He said, "Larger." He didn't say "a little larger." He just say "larger piece of paper."

Q. (By Mr. Dasteel): Did he indicate that the size might be about this size (indicating)? I am showing you now a copy of the bill of lading.

Mr. Bunn: I object as calling for a conclusion of the witness.

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Showing you a copy of the bill of lading in this case.

A. He used the words "larger piece of paper," and nothing else.

The Court: What is that exhibit number?

Mr. Bunn: It is No. 7, for identification, that he was showing him—the freight bill.

The Court: No. 7?

The Witness: That is No. 7, your Honor.

The Court: I mean, what is that exhibit number, the bill of lading?

Mr. Dasteel: The bill of Lading? [579]

The Court: You said you were showing him the original bill of lading.

Mr. Dasteel: No, a copy of the original bill of lading.

The Court: What is the exhibit number?

Mr. Dasteel: It is not in evidence yet.

The Court: Let's mark it for identification.

Mr. Dasteel: Yes.

The Court: That will be Defendants'—how are we going to figure this out—it is going to be D for Dulien, Exhibit D-A, for identification.

(The document referred to was marked Defendants' Exhibit D-A, for identification.)

Mr. Bunn: Is this an original or a copy?

Mr. Dasteel: This is a copy. This is a copy from the office of Dulien.

The Court: Where is the original now?

Mr. Diether: I have it, your Honor.

(Testimony of J. B. Londono.)

Mr. Hubert Morrow: What is this going to be?

The Court: It is going to be "D" for Dulien "A"—Dulien's A, in other words.

Mr. Diether: Why don't you use the original?

Mr. Dasteel: I want to say the file shows that this copy of the bill of lading was attached to a letter, a carbon copy of a letter.

The Court: Are you testifying? [580]

Mr. Dasteel: Yes, for the record, your Honor.

Mr. Bunn: I move to strike the remarks of counsel.

Mr. Dasteel: Do I understand you are willing to accept this as an exhibit for identification?

The Court: If you are showing a document to some witness, it ought to be identified.

Mr. Hubert Morrow: May I ask that the statements of counsel as to what the document shows be stricken.

The Court: The motion is granted. Whatever document you showed the witness, if you indicated it was this size, that should be marked Exhibit D-A, for identification, so that everybody will know what the document is, particularly my brethren on the Appellate Court, and what you had in mind when you showed it to him.

Mr. Dasteel: I am showing the witness a copy of the bill of lading.

The Court: Hand it to the clerk. Just mark it "D-A" with a pencil now,—red, green, or any other color. [581]

(Testimony of J. B. Londono.)

The Court: Did Mr. Moran show you the freight bill, or did he have it in front of him?

The Witness: Yes, I gave him the freight bill. [582]

The Court: Which is the document? Is that it?

The Witness: Yes, it is, and he say, "No, I pay against other document, a larger piece of paper."

The Court: A larger piece of paper?

The Witness: Yes. He had in his hands this document.

The Court: That is Exhibit 7?

The Witness: No. 7.

The Court: All right.

Q. (By Mr. Dasteel): Did he say anything more about it? Did he indicate what was on the other document? A. No.

Q. That is all he said? A. Yes.

Mr. Dasteel: I am withdrawing this document, if your Honor please, that you had marked for identification.

The Court: Well, it will remain as marked for identification.

Mr. Dasteel: Inasmuch as you sustained the objection——

The Court: It ought to remain marked for identification since you have exhibited it to the witness.

Mr. Dasteel: That is all right.

The Court: It is just marked for identification. [583]



(Testimony of J. B. Londono.)

April 26, 1950

Q. You shipped approximately 1,051 tons to South America, did you not? A. Yes.

Q. And you delivered some tons to the plant for pickling? A. Yes.

Q. And you are going to let us know the quantity on that? A. Yes.

Q. The balance of the wire that you purchased then was left on the dock, was it not? A. Yes.

Q. How many tons were left on the dock?

A. I suppose we left——

Q. What was the answer, please?

A. I suppose was left on the dock 950 tons. I supposed to have on the dock 2,000 tons. We moved from Pier 1-A, Long Beach, 1,051 tons, and I suppose was left the balance, but the records later showed that 81 tons were short.

Q. Now, what precautions did you take to safeguard the balance left on the dock?

A. I, personally, don't take any [593] precautions.

Q. You didn't take any?

A. But I don't know if Mattoon & Company or Matson Navigation or Transmarine Corporation take some.

Q. Did you give Mattoon any instructions to safeguard the quantity of material left on the dock?

A. Not in particular.

Q. Now, you testified that you expended the sum of \$3,000 as expenses while you were in Los Angeles in connection with the purchase and sale of this

(Testimony of J. B. Londono.)

wire, did you not?           A. Yes.

Q. Over what period did that cover?

A. From August the 1st until November.

Q. What time in November? What day?

A. Until the second week in November?

Q. The second week in November.

A. More or less. I am not sure about the date.

Q. Three months and a half?

A. I beg your pardon?

Q. Three months and a half?

A. More or less.

Q. And you testified that you paid \$3.50 for a room and \$7.00 a day for meals?           A. Yes.

Q. That is \$10.50 a day. That would be approximately \$300 a month, and three and a half times 300 is \$1,050. [594] How do you account for the difference between \$1,050 and \$3,000?

A. It was my calculation about the expenses here, and my time.

Q. How did you calculate it?

A. And my time.

Q. Your time?           A. Yes.

Q. Oh, that \$3,000 includes payment for your services?           A. Yes. [595]

Q. And how did you figure your services, so much per hour or so much per day?

A. Per month.

Q. How much a month?

A. My salary in Colombia is about 3,000 pesos a month.

Q. 3,000 pesos a month?           A. Yes.

(Testimony of J. B. Londono.)

Q. And interpreted into American dollars, how much would that be?      A. It is \$1,000.

Q. \$1,000 a month?      A. Yes.

Q. You qualified, according to your attorney, as an expert on wire. How many tons of wire have you purchased or sold during your business experience?

A. Before this transaction or including this transaction?

The Court: Altogether, his question is.

The Witness: About 5,000 tons of wire.

Q. (By Mr. Dasteel): Was all of that wire purchased in the United States?      A. Yes.

Q. And sold in Colombia?

A. Yes, with the exception of the quantity we sold [596] here, I sold here to Gonzalez & Blanco.

The Court: In this lot?

The Witness: In this lot.

Q. (By Mr. Dasteel): Did you ever sell any copper wire, barbed wire made of copper?

A. No, just galvanized wire and black wire.

Q. Are there any other types of barbed wire of different specifications than the barbed wire which is shown over there and is involved in this suit?

A. (Through Interpreter): More or less the same quality only the rolls are smaller.

Q. Now, the specifications on this particular barbed wire is 12 and 12½ gauge, 2 strand with four point barbs spaced at 3 inch and 4 inch intervals?      A. Yes.

(Testimony of J. B. Londono.)

Q. Do you know of any other wire of different specifications, and if so, what are they?

A. Yes. There is many other kinds of wire, not twisted wire and different gauge, 12 gauge, 13 gauge, 14 gauge, with one point every 2 inches, one point every 3 inches, one point every 4 inches.

Q. How is barbed wire weighed, by the yard or or the foot?

A. Always we used to buy the wire by the weight. We don't know the length of the coils because the length is [597] different according to the gauge.

Q. You don't know then just how it is weighed by the foot or the yard? A. No.

Q. Now, the barbed wire which you sold to your customers in South America, did you sell the galvanized at one price and the black wire at another price, or did you sell it all at the same price?

A. (Through Interpreter): I only quoted and sold galvanized wire, but I delivered black wire and renegotiated the price.

Q. Now you stated yesterday, or the day before, I believe, or probably it was last Friday, that neither the Citizens National Bank nor the Matson Navigation Company made any efforts, as far as you knew, to send customers to you for the purchase of the wire. Do you recall that?

A. Yes, I testified that.

Q. Now, what efforts did you make to sell the wire?

A. I offered the wire to Colombia, Cali, Colom-



(Testimony of J. B. Londono.)

bia; I have taken people to the pier at Long Beach 15, 20 times.

Q. How many people did you make contact with in Colombia? [598]

\* \* \*

The Witness: I contacted three people in Colombia.

Q. What are their names?

A. Octavo Trujillo, Mr. Jorge Fajardo, and Mr. Echavarria. I asked him to take the balance of the lot and he refused to take it.

Q. About how many potential buyers of black wire are there in Colombia? A. No one.

Q. None?

A. Because I reported that the wire was [599] rusty.

\* \* \*

Q. (By Mr. Dasteel): That is not responsive to the question. I asked you how many potential buyers of wire, good wire, are there in Colombia.

The Court: Do you understand the question?

The Witness: Yes.

Mr. Bunn: Do you understand the word "potential," what it means?

The Court: Do you understand the meaning of "potential"?

The Witness: Yes.

The Court: What does "potential" mean?

The Witness: Potential means—(through Interpreter) to my knowledge all merchants in Colombia were willing to buy galvanized wire, new.

(Testimony of J. B. Londono.)

Q. (By Mr. Dasteel): Now, what efforts did you make in Los Angeles to sell the wire, and how many people did you contact?

A. More than 12 people.

Q. Name them.

A. I don't know the names. People come to the office and say we know you have some wire in Long Beach. All right, I have some wire to sell. Then I take them down. They see the wire and they say we don't take it. It is very rusty. Many [600] people.

\* \* \*

Q. Then all you did in connection with your efforts to sell the wire you have testified to?

A. At one or several times with Mr. Sweeney of Mattoon & Company, he reported to me about people that wanted to buy the wire, and I agreed to take the people down the pier and show the wire.

Q. Now, you testified as to the market price of wire. What do you call the market price or value of wire? How do you arrive at it?

A. For the market price I mean the price that it was offered to me for good galvanized wire in Colombia, and people here in Long Beach offered me \$160, \$170, \$180 per ton for good wire, but I could not produce good wire.

On the black I knew the fact that the market value from Mr. Gonzalez's information.

\* \* \*

Q. (By Mr. Dasteel): Now, you testified with

(Testimony of J. B. Londono.)

reference to the condition [601] of the wire that you saw at the dock on many occasions and you stated that you observed it was rusty.

A. Yes.

Q. And you estimated that at one time 60 per cent was rusty and at another time 75 per cent was rusty, and in answer to a question of your counsel as to how you determined that you stated it was your calculation.

A. Yes.

Q. Do you recall that? A. Yes. [602]

Q. Do you recall that? Now, just how did you calculate the percentage of rusty and non-rusty wire? Did you count the coils?

A. (Through Interpreter): I didn't count the coils. It was in my appreciation, by seeing the wire.

Q. Was the wire stacked up in piles?

A. Yes, about.

Q. How high? How many coils to a stack?

A. In some piles four and some piles five. In some places one.

Q. And how many deep?

A. (Through Interpreter): Very large lots.

Q. Then you could only see the top and the sides; is that correct? A. Yes.

Q. And you had no way of determining the condition of the wire that was inside the pile or the stack? A. No.

Q. Now, you testified last week under the interrogatories of your counsel that some of the wire you could break easily with your fingers?

A. Yes.

(Testimony of J. B. Londono.)

Q. And that was the bad rusty wire, that you testified to? A. Yes. [603]

Q. The same as Exhibit No. 51, I believe?

Mr. Bunn: I object to the last part of the question. He did not so testify.

Mr. Dasteel: No, I am asking you now.

Mr. Bunn: What are you asking?

Mr. Dasteel: If the bad rusty wire you testified you could break with your fingers was the type shown by Exhibit No. 52.

The Court: You can go over there.

Mr. Dasteel: This type (indicating)?

The Witness (Through Interpreter): There was a lot of wire that was in a poorer condition than this.

Q. (By Mr. Dasteel): Didn't you testify that these four exhibits were representative of all the wire?

A. (Through Interpreter): It was what I asked Koppel to take from the different piles, but there was some wire in still poorer condition than these four coils.

Q. Would you like to see if you can break that with your fingers?

Mr. Bunn: I object to that question. I think it is argumentative. It is certainly incompetent, irrelevant and immaterial. He might properly be asked whether he tried to break any wire down there himself, but to put him to a test in this court room I think is improper and out of order.

The Court: I think so. [604]



(Testimony of J. B. Londono.)

Mr. Dasteel: If your Honor please, the witness stated that much of the wire was so bad he could take and break it with his fingers, and he brings samples to show the poor wire, and to substantiate the statement he made he should be willing to perform it here and now.

The Court: The objection is sustained. How many rolls of wire were there all together,—55,000? Wasn't that what the bill of lading said?

Mr. Dasteel: Yes, about that. But, if your Honor please, it would seem obvious that the complaining witness would naturally, when he brings samples in, bring in the very worst that he could find.

Mr. Bunn: You expected me to do that and charged me with that the other day. You said that is what I do, but maybe I surprised you.

Mr. Dasteel: No, you didn't.

The Court: The witness' testimony stands in the record. [605]

\* \* \*

Mr. Diether: Your Honor, I cut a small piece of wire from roll No. 53.

The Court: We will tag it as 53-A.

(The cutting referred to was marked Plaintiff's Exhibit No. 53-A for identification.)

Mr. Dasteel: May I remove it from the court room and return it? I should like to take it with me for a short time.

The Court: Surely. Any objection?

(Testimony of J. B. Londono.)

Mr. Bunn: None, sir.

The Court: Very well.

Cross-Examination

By Mr. Diether:

Q. Mr. Londono, were you in the United States in 1946 prior to May 6th? A. Yes.

Q. When did you come to the United States first in 1946? A. In February or March, 1946.

Q. You can't fix any more definite date than February or March? [607] A. February.

Q. How long did you stay?

A. Two months, more or less.

Q. What date did you go back to Colombia?

A. One day in April.

Q. Then you returned again on May 6th?

A. Yes.

Q. When you were here in February, did you purchase any barbed wire? A. Yes.

Q. Did you purchase barbed wire which was then surplus barbed wire from the government?

A. Yes.

Q. How much barbed wire did you purchase?

Mr. Bunn: I object to that as immaterial, a separate and distinct transaction from this one here.

The Court: I suppose that would go to his qualification as to the weight of his testimony as an expert and is admissible on that ground only.

Mr. Diether: And also on his knowledge of barbed wire.

(Testimony of J. B. Londono.)

The Court: That goes to the weight of his testimony.

The Witness: Will you repeat the question?

(The question referred to was read by the reporter as follows:

("Q. How much barbed wire did you purchase?") [608]

The Witness: About 200,000 coils of 28-pound coils.

Q. (By Mr. Diether): 200,000 coils?

A. Yes.

Q. How many tons?

The Court: 28-pound coils?

Q. (By Mr. Diether): How many tons would that be altogether? You don't know how many tons you purchased?

A. I know how many coils. May I calculate?

Q. You didn't purchase it by the ton?

A. About 2,500 tons.

Q. Was any of that new?

A. It was unused barbed wire, surplus barbed wire.

Q. It was surplus barbed wire? A. Yes.

Q. And you bought it directly from War Assets Administration?

A. Yes, I paid direct to War Assets through the bank, but there was an agent in between.

Q. Did you pay for that wire through letters of credit purchased from the Citizens Bank?

A. Yes.

(Testimony of J. B. Londono.)

Q. How many letters of credit did you purchase?

A. Several; more than two. [609]

Q. Did Mattoon & Company act for you as shipping agent in connection with the reshipment of that wire to Colombia? A. Yes.

Q. And during that time you were acquainted with Mr. Schroeder in the bank? A. Yes.

Q. And did you know Mr. Powers at that time?

A. Yes.

Q. Mr. Emshoff?

A. I saw Mr. Emshoff but I had no contact with him.

Q. Did you know Mr. Moran at that time?

A. No. [610]

\* \* \*

Q. When you came to the United States in May you had one order for barbed wire from a client in Colombia? [611]

\* \* \*

The Witness: No, I have many requisitions and the object of my trip was to find wire. [612]

Q. When did you first have a fixed order from Mr. Echavarria in Colombia for 1,000 tons of barbed wire?

\* \* \*

The Witness: One day during June, 1946, International factors located in Los Angeles offered me galvanized barbed wire through Mr. Rendon.

\* \* \*

The Court: Did you understand the question?



(Testimony of J. B. Londono.)

The Witness: Yes, your Honor. I am answering. [613]

\* \* \*

Mr. Diether: I only asked for the date. I don't care about the preliminaries.

Mr. Bunn: I have forgotten what the real question was. The date of what?

The Court: The date when he got an order from Echavarria for 1,000 tons of wire.

Mr. Diether: Right.

Mr. Bunn: You may answer.

The Witness: I don't remember the date.

Q. (By Mr. Diether): Was it in June?

A. It was in June.

Q. Did you get any other orders between that time and July the 29th, 1946, for wire in Colombia?

A. No.

Q. Then on July 29, 1946, you only had one order for wire in Colombia? A. Yes.

Q. And that was from Mr. Echavarria?

A. Yes.

The Court: And that was for 1,000 tons?

The Witness: 1,000 tons galvanized barbed wire.

Q. (By Mr. Diether): Under what name does Mr. Echavarria operate?

A. On this particular transaction he operated in his own name, Alberto Echavarria. [614]

Q. Who is Roldan y Cia.?

A. Oh, they are brokers; like Mattoon & Company are in Los Angeles, for instance.

Q. Were they the brokers for Mr. Echavarria?

(Testimony of J. B. Londono.)

A. For Mr. Echavarria.

Q. Or was that firm your broker?

A. Mr. Echavarria's brokers. They are general brokers in Colombia.

Q. When you went to Dulien's office on July the 11th, 1946, did you have any discussion with any representative of Dulien in connection with the bill of lading by which the 2,700 tons of wire was being shipped from Honolulu to Los Angeles?

A. No.

Q. Did you have any discussion about a bill of lading—— A. No.

Q. ——for the shipment of that wire on July the 12th? A. Not in particular.

Q. Did you have any discussion with any representative of Dulien as to whether that wire was being shipped from Honolulu to the United States by a straight bill of lading or by an order bill of lading? A. No.

Q. Did you have any discussion as to whether that 2,700 tons of wire was being shipped on a clean bill of lading or [615] not?

The Court: Discussion with whom?

Mr. Diether: Representatives of Dulien.

The Witness: No.

Q. (By Mr. Diether): Neither on July the 11th or July the 12th? A. No discussion.

Q. Did you make any inquiry from any representative of Dulien on July 11th or July 12th as to the character of the bill of lading by which that

(Testimony of J. B. Londono.)

2,700 tons of wire was being shipped from Honolulu to Los Angeles?      A. No.

Q. Did any representative of Dulien on July 11th or July 12th represent to you that that 2,700 tons of wire was new?

A. It was like the samples they showed me.

Q. Just answer my question.

Mr. Diether: I will ask, if your Honor please, that the answer be stricken and the witness instructed to answer the question.

The Witness: We had no discussion about the new.

Mr. Diether: May the answer be stricken and the witness instructed to answer, your Honor, please?

The Court: He just answered.

Mr. Diether: May I hear the answer? [616]

(The answer was read by the reporter.)

Q. (By Mr. Diether): In other words, it was not represented to you as new wire?

A. Not from the mills.

Q. By anybody from Dulien? They didn't tell you it was new wire, did they?      A. No.

Q. Didn't you attempt to buy galvanized wire from Mr. Dulien, at first?      A. Yes, 1,000 tons.

Q. And he wouldn't sell it to you, would he?

A. He said he had to sell the complete lot of 2,700 tons.

Q. In other words, you had to take the whole lot in order to get any?

(Testimony of J. B. Londono.)

A. Yes, in order to have the 1,000 tons of galvanized wire that I need I had to buy the 2,700 tons from Dulien.

Q. Did he tell you that the 2,700 tons was going to be segregated, that this galvanized wire would be segregated in one lot and the black wire in another lot?

A. No. He told me the complete lot would be half galvanized and half black.

Q. And the galvanized and the black were all mixed up together in this one lot of wire?

A. No discussion about that. [617]

Q. You didn't have any discussion about that?

A. No.

Q. But you didn't understand that it was going to be segregated, did you, when you received it?

A. (Through Interpreter): I didn't take that into consideration.

Q. When you went to Dulien's office on July the 11th, did you have any discussion with anyone there in regard to the terms of payment?

A. Yes. I offer to pay——

Q. You were talking to Mr. Grinstein?

A. Grinstein. I told him I had on hand \$160,000 and that I will require money from Colombia for the balance. [618]

Q. Did he take that down? Did he write that down on a piece of paper? A. No.

Q. Go ahead. Tell us the rest of the conversation you had with him about the terms of payment on July 11.



(Testimony of J. B. Londono.)

A. Because it was late and Mr. Grinstein asked me back the next day.

Q. In other words, all you told him on the 11th was that you had a letter of credit for \$160,000?

A. Yes.

Q. And the balance of it you would have to get from Colombia?

A. From Colombia or from the bank here.

Q. Did you tell him that?

A. I suppose I tell him.

Q. You are not sure now?

A. No, I am not sure now.

Q. Was there any other discussion on the 11th about the terms of payment? A. No.

Q. Did you have any discussion on the 11th about the date of delivery?

A. Mr. Grinstein told me that the wire is coming from Honolulu and—not in particular the date of delivery.

Q. You didn't know what date you were going to get it? [619] A. No, not on the 11th.

Q. Was there any discussion about the description of the wire on the 11th? A. Yes.

Q. What was said about that?

A. That half of the 2,700 tons would be black like the coils, the rolls, I saw in the yard, open place, in Dulien's, and the other half will be galvanized.

Q. Anything else about where Dulien bought the wire?

(Testimony of J. B. Londono.)

A. I understand from the government in Honolulu.

Q. And you understood it was surplus barbed wire?  
A. Yes.

Q. Did you discuss with Mr. Grinstein at that time how many barbs there would be?

A. I request at all times and I suppose at this time I request, too, 12 or 12½ gauge, 3 or 4 points, 3 or 4 inches, standard wire that was required.

Q. Did you discuss that on the 11th?

A. Possibly, yes.

Q. Anything else about the description of the wire?

A. No, I take in consideration the samples.

Q. Did you ask Mr. Grinstein when Dulien had purchased the wire?  
A. No.

Q. Did you ask him where it had been [620] stored?  
A. No.

Q. You knew it was surplus? Did you have any question in your mind as to how long it had been in the government's hands?

Mr. Bunn: I object to the question as incompetent, irrelevant and immaterial. He can testify what conversation took place, but what was in his own mind I think is immaterial.

The Court: Overruled.

Q. (By Mr. Diether): Answer the question, please.  
A. No.

Q. Did you know that the government was not selling any surplus wire until after the hostilities had stopped with Japan in August of 1945?

(Testimony of J. B. Londono.)

A. (Through Interpreter): It is possible that I knew it, but I didn't take that into consideration.

Q. You didn't know when the government started to sell barbed wire as surplus?

Mr. Bunn: I object to that as immaterial.

The Court: Sustained.

Q. (By Mr. Diether): Was there any discussion on the 11th about the rejection of 300 tons of wire for any purpose? A. No. [621]

Q. On the 12th, tell us what happened when you went to Dulien's office on the 12th. Who did you see first? A. Mr. Grinstein.

Q. Did you see him in his office?

A. In Dulien's office.

Q. And did you sit down at a desk?

A. I suppose so.

Q. Don't you remember?

A. I don't remember precisely. I had a seat at the time I signed the contract.

Q. Did you have any discussion with Mr. Grinstein about the terms of payment, how you were going to pay for this wire on the 12th?

A. Yes.

Q. Tell us what you said and what Mr. Grinstein said. A. I say that immediately——

Q. What? A. Immediately.

Mr. Bunn: Immediately.

Mr. Diether: All right.

The Witness: In other words, after that day I will open one credit for \$160,000 and several days

(Testimony of J. B. Londono.)

later I will open the balance of the credit for \$128,900, and he accepted. [622]

\* \* \*

Q. (By Mr. Diether): Was the \$160,000 letter of credit you were going to open immediately a different letter of credit than the \$160,000 you had from the bank at that time from Mr. Echavarria?

\* \* \*

Mr. Bunn: I object to that. It assumes a fact not in evidence. He hasn't testified that he then had a letter of credit from Mr. Echavarria. He said he had the money available, meaning in what form I don't know.

Mr. Diether: Mr. Londono has testified that he got a letter of credit from the bank in the early part of July for \$160,000.

The Court: In your question you framed it on the basis that he had a letter of credit from Mr. Echavarria. [623]

\* \* \*

The Court: The objection is sustained.

\* \* \*

Q. You had a letter of credit from the defendant bank for \$160,000, didn't you, when you went to Dulien's office on July 12? A. Yes.

Q. Is that the letter of credit that you were telling Mr. Grinstein about that you were going to purchase the next day?

A. It was the amount, \$160,000.

Q. But you were going to purchase another let-



(Testimony of J. B. Londono.)

ter of credit in the same amount?

A. Yes, with the same money.

Q. Have you told us all that you told Mr. Grinstein about the terms of payment on July 12?

A. In essence, yes.

Q. Was anything said about what Dulien would have to present in order to collect the \$160,000 on the letter of credit that you were going to purchase immediately?

A. No. [624]

Q. Nothing was said about that? A. No.

Q. And was anything said about what Dulien would have to present to collect the \$128,900 letter of credit that you were going to open in a few days?

A. No.

Q. You had no discussion about that at all?

A. No.

The Court: \$128,900?

The Witness: Yes, your Honor.

\* \* \*

Q. Did you have any discussion with Mr. Grinstein before you saw this sales order that he presented to you that day about what Dulien would have to present to the bank in order to collect the \$160,000 letter of credit that you were going to purchase, or the \$128,900 letter of credit that you were going to purchase in a few days?

A. (Through Interpreter): I have already answered no, and I again repeat no.

Q. Did you have any discussion with Mr. Grinstein on the 12th about the rejection of 300 tons of wire for any [625] purpose?

A. No.

(Testimony of J. B. Londono.)

The Court: Did you read this sales order before you signed it?

The Witness: Yes, your Honor. But I don't take it into consideration.

The Court: You do not take it into consideration as a conversation? What I am getting at is, did he just write this up and you did not say anything at all about it?

The Witness: I don't remember what conversation took place.

Mr. Diether: I can't hear you.

The Court: He says, I don't remember what conversation took place.

Q. (By Mr. Diether): What happened next after you had this discussion with Mr. Grinstein about the terms of payment on the 12th?

A. Mr. Grinstein dictate the letter of credit to Mr. Stanley.

Q. Right in your presence?

Mr. Bunn: The letter of credit?

The Witness: The sales order.

Q. (By Mr. Diether): Right in your presence?

A. I was in the office at the same time. [626]

Q. You heard him dictate it, did you?

A. I was in the office but I didn't follow every movement.

Q. But you were in the hearing of Mr. Grinstein's voice? A. Possibly, yes.

Q. Did you make any objection to anything he dictated to Mr. Stanley? A. No.

Q. You heard Mr. Grinstein dictate the portion

(Testimony of J. B. Londono.)

of this sales order which refers to the two letters of credit?

A. I was present but I didn't follow in detail.

Q. Was Mr. Rendon there with you at that time?

A. He was in the office at the same time.

Q. He was sitting right next to you?

A. I don't remember. [627]

Q. Was he in the room?

A. Possibly, yes.

Q. And you made no objection at that time to anything that Mr. Grinstein dictated to Mr. Stanley?

A. No.

Q. Did you ask any questions about any of the matter which Mr. Grinstein had dictated to Mr. Stanley?

A. (Through Interpreter): My only interest was to know whether in the lot would be half galvanized and half black.

Q. That was your only interest?

A. Yes, and the good quality of the wire, of course.

Q. What did you do next, after you heard this dictation by Mr. Grinstein to Mr. Stanley?

A. At the same time—at that time Mr. Grinstein told me that Mr. Dulien was coming to the office, and he suggested to wait until Mr. Dulien come to the office.

Q. Did you just sit there in the office and wait until Mr. Dulien came?

A. Yes. Then we went to Mr. Dulien's personal

(Testimony of J. B. Londono.)

office, and we wait there until Mr. Dulien come to the office.

Q. How long was that?

A. Maybe 15 minutes.

Q. 50 minutes? A. 15 minutes.

Q. 15 minutes. [628]

A. I can't say how many minutes, but it was a while.

Q. When you went into Mr. Dulien's office, had you received the samples? A. I suppose so.

Q. When did you get the samples, with respect to this other matter that you have told us about?

The Court: What other matter?

Mr. Diether: The witness has testified that he went to the office and he was seated in Mr. Grinstein's office.

The Court: I know, but with reference to what other matter? You say "this other matter."

Mr. Diether: Well, the discussion he had with Mr. Grinstein in his office.

The Witness: I don't understand the question. Will you repeat it?

The Court: I don't either. Did you get the samples before you signed the sales order?

The Witness: Yes.

Mr. Diether: No. I want to find out this, your Honor: Did you get the samples before you went in to Mr. Grinstein's office, or during the time you were there, or when?

Mr. Bunn: Mr. Grinstein's office? You followed



(Testimony of J. B. Londono.)

him into Mr. Dulien's office. Are you going back to Mr. Grinstein's office?

Mr. Diether: He told us he had a conversation with Mr. [629] Grinstein when he first went to the office on July 12th. I want to know if he got the samples on that occasion.

The Witness (Through Interpreter): Probably, yes.

Q. (By Mr. Diether): Did you see them cut off of the rolls? A. No.

Q. They brought them in to you while you were in Mr. Grinstein's office in a paper? A. Yes.

Q. Did you have any discussion about them then (interpreted)? A. About the samples?

Q. Yes.

A. No. I take it. I saw the samples. I accepted them, the paper.

Q. And you wrapped them up and you put them in your pocket?

A. No, not in pocket. I had them in my hand.

Q. You held them in your hand?

A. Well, in my possession.

Q. You had them in your hand, then, when you went into Mr. Dulien's office?

Mr. Bunn: You mean private office? The whole thing is Dulien's office.

Mr. Diether: Private office, yes, sir. [630]

The Witness (Through Interpreter): Probably had them in my hand.

Q. (By Mr. Diether): Did you have any discussion about them? A. No.

(Testimony of J. B. Londono.)

Q. Was there any discussion in Mr. Dulien's office about the terms of payment?

Mr. Bunn: You mean private office now? If you will be kind enough to say "private office," because the whole office, as I say, is Dulien's. Even Mr. Grinstein's office is Dulien's office.

Mr. Diether: It is a corporation, isn't it?

Mr. Bunn: Please be as specific as you can.

The Witness: Please repeat the question.

(The question was read by the reporter.)

The Court: Do you mean Mr. Dulien's private office?

Mr. Diether: Mr. Dulien's private office.

The Court: In the interest of time-saving everybody has been referring to the whole statutory name as Dulien's.

The Witness: No discussion in Dulien's private office.

Q. (By Mr. Diether): When did you first see the sales order?

A. After Mr. Stanley brought the order.

Q. In whose office were you?

A. In Dulien's office, in the private office of Mr. [631] Dulien; Mr. Grinstein and Mr. Stanley's office.

Q. And was Mr. Rendon there?

A. Yes, he was there.

Q. And were these other two gentlemen?

A. Mr. Stinson and Mr. Tuthill.

Q. They were all there together? A. Yes

(Testimony of J. B. Londono.)

Q. How many copies did they bring in at that time? A. More than two.

Q. Did you have a copy to look at?

A. I had a copy.

Q. Did Mr. Rendon have a copy to look at?

A. No. I don't know. Maybe my own copy.

Q. He looked at your copy? A. I think so.

Q. Was there any discussion about the sales order at that time? A. Not that I remember.

Q. Did you ask any questions about it?

A. I don't remember. I accepted the order. I signed the order.

Q. You read then under the terms of the sales order, which is Plaintiff's Exhibit 2, as follows:

"Letter of Credit for \$160,000.00 now on deposit at Los Angeles Main Office of Citizens National Bank [632] subject to full draft on deposit of on-board bills of lading."

You read that? A. I suppose so.

Q. But you made no objection to anything there about the bill of lading? A. No.

Q. You also read then in the sales order the material following that, which reads:

"Letter of Credit for \$128,900.00 to be established on or before July 22, 1946, subject to draft on presentation of delivery receipts."

You read that?

A. (Through Interpreter): It is possible that I read that.

(Testimony of J. B. Londono.)

Q. And you made no objection to it?

A. No. May I say this, Mr. Diether?

Q. Yes.

A. I signed the contract. Before I don't have any objections to make.

Q. Before you read it over? Before you signed it?

A. I suppose I read it and I signed.

Q. You also read, then, the last paragraph, which reads:

“Acceptance of material subject to [633] rejection by buyer of not more than 300 net tons due to excessive weathering.”

Did you make any objection to that?

A. (Through Interpreter): I suppose I read it, but I didn't make any objection.

Q. Did you ask any questions about it?

A. I don't remember any questions.

Q. And you had no discussion with Dulien, or any of his representatives, at any time on the 11th or the 12th of July, 1946, relative to the rejection of any quantity of the wire which you were purchasing, for any purpose?

A. (Through Interpreter): I don't recall having such discussion—(in English) in person.

Q. I believe you stated that you didn't know at that time, that is, July the 12th, the name of the boat on which this wire was being shipped to Los Angeles?

A. Repeat the question, please.

(The question was read by the reporter.)



(Testimony of J. B. Londono.)

A. No.

Q. You stated that you found out from Mr. Gonzalez?

A. Yes. At the time I signed the contract—(through interpreter) I didn't know—(in English) the name of the boat. But the same day or the next day, or the 14th, I saw Mr. Gonzalez. (Through interpreter) I knew that Mr. Gonzalez had purchased some wire in Honolulu, and I wanted to have an [634] option on his wire. Then I visited his office, and then I was told that the wire was coming on the White Squall. He didn't mention White Squall.

The Court: By Gonzalez?

The Interpreter: By Gonzalez.

Q. (By Mr. Diether): That is the same Gonzalez that is connected with Gonzalez & Blanco, that you refer to? A. Yes.

Q. Did you know that he had purchased the wire from Dulien?

The Court: You mean before he went there?

Q. (By Mr. Diether): I mean, or, I should say when he went there. When you went there, did you learn that? This is on July the 13th or 14th.

A. I don't remember if from Mr. Dulien, but from Honolulu I knew.

Q. You didn't know that he purchased it from Dulien?

A. I don't remember. If he told me, I don't remember.

Q. Did he tell you how much he was purchasing?

(Testimony of J. B. Londono.)

A. He mentioned that, yes. 1,500 tons of wire.

Q. Did he tell you the character of the wire?

A. Black wire and galvanized wire.

Q. He said he was buying both kinds?

A. Both kinds, yes. [635]

\* \* \*

Q. Did you know that Mr. Gonzalez's wire, that he purchased, was coming on the same boat that the wire that you had purchased from Mr. Dulien was coming on?

The Court: At that time?

Mr. Diether: Yes, at that time.

The Witness (Through Interpreter): I knew that the boat was coming from Honolulu on the 22nd, the day that Mr. Dulien had told me that the boat would be here, and I supposed that it was the same boat, and Gonzalez told me that in the same boat that his wire was coming from Honolulu some other wire was being shipped also, and I concluded that that would be Dulien's wire.

Now, Mr. Diether, I don't remember if Mr. Grinstein told me the name of the boat, but maybe he told me. I am not sure. I admit that maybe it was possible, but I don't remember.

Q. (By Mr. Diether): You went to Mr. Mattoon's office shortly after you signed that purchase order on July 12, didn't you?

A. Yes, I was at Mattoon's office.

Q. What day were you there? [636]

A. It was two or three days later.

(Testimony of J. B. Londono.)

Q. The sales order was dated on the 12th, which I believe was Friday. A. That is right.

Q. Does that refresh your recollection as to when you went to Mattoon's office?

A. Maybe the next day.

Q. That was Saturday?

A. Possibly. And I told Mr. Sweeney that I will have some barbed wire to ship to South America. I inquired from him to make a space reservation.

Q. Did you tell him how much?

A. Yes, I told him 2700 tons of wire, that I would like to ship first one thousand tons to Mr. Echavarria in Colombia, but all the wire would be shipped to Colombia, and he had a conversation with Mr. Rendon, and I think he called Matson in order to know the exact date that the boat was coming, in order to make the space reservation.

Q. Is that all you told him on that day?

A. In essence, yes.

Q. Did you tell him that you were going to pay for it through a letter of credit purchased at the Citizens Bank? A. No mention of that.

Q. Did you tell him you wanted him to accept the documents? [637]

A. (Through Interpreter): I told him that he would handle the shipments. [638]

\* \* \*

The Witness: At the time I was in Mattoon's office inquiring for the date the "White Squall" will arrive I don't give any particular instructions.

(Testimony of J. B. Londono.)

I say I will have some barbed wire I will ship to South America, please make reservation. But when I bought the letter of credit from the bank to Dulien in my conversation with Mr. Sweeney I gave him all these instructions, of course.

Q. (By Mr. Diether): Then you actually did give him some instructions before July 29th to accept the documents?

A. July 29th, July 30th, July 31st. [641]

Q. When did you give these instructions to Mattoon about accepting the documents from the bank?

A. It was by sure the 31st of July.

Q. What date? A. The 31st of July.

Q. Not before that date?

A. Not in particular that I can remember.

Q. You didn't do anything before the 31st?

A. Not in particular any instruction how to handle the shipments, just ship the wire to South America.

Q. But you didn't tell him to accept the documents before the 31st?

A. It is obvious he will accept the documents because he is going to handle the shipments.

Q. Then you instructed him to accept the documents from the bank? A. Obviously, yes.

Q. And that was before July 29th?

A. Before July 29th or July 31st.

Q. You purchased the letter of credit on July 27th, didn't you? A. Yes.

Q. Didn't you tell him immediately after that?

A. No.



(Testimony of J. B. Londono.)

Q. When did you tell him? [642]

A. The 31st.

Q. The 31st? A. Yes.

Q. That is the first time?

A. Possibly, yes.

Q. In your statement that I just read you on your deposition, you said you told him that on July 14th.

The Court: No, counsel. I am sorry. I just read the deposition. He said he told him that in July.

Mr. Diether: I withdraw that statement.

Q. When did you see Mr. Mattoon after July 4th?

Mr. Bunn: Mr. Mattoon?

Mr. Diether: Mr. Sweeney.

The Witness: I saw him very many times because we were friends, but in particular I saw him the 31st of July one day I went to his office.

Q. (By Mr. Diether): Did you see him——

Mr. Bunn: Let him finish his answer, please.

The Witness: And went to the bank with him on the 31st.

Q. (By Mr. Diether): Did you see him between July 14th and July 27th?

The Court: He said yes, he saw him many times.

Q. (By Mr. Diether): Did he tell you that he had reserved space for 2700 [643] tons of wire?

A. I don't remember. The fact I remember, it was about the 31st, the only space available was Moore-McCormack boat to Cartagena and only 120

(Testimony of J. B. Londono.)

tons, and no other boat available at that time for Colombia.

Q. So on the 31st the only space that you had was for 120 tons? A. About.

Q. And he was endeavoring to get more space for you? A. Oh, yes.

Q. At that time you were intending to ship all of the 2000 tons?

A. Yes. He had required from Grace and from Moore-McCormack about space. In other words, he advised the shipping company that we would have the cargo for South America.

Q. On July 26th you received a letter from Dulien's office, didn't you? A. Yes.

Mr. Diether: May I see Plaintiff's Exhibit 3, please?

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 3. Is that the letter you refer to?

A. Yes, it is.

Q. I call your attention to this sentence in that letter, [644] it says, "We now have the bill of lading but upon inquiry at the bank find that there is no letter of credit available." When you saw Mr. Stanley on the 26th, did you ask to see the bill of lading? A. No.

Q. Did you ask him any question about it at all?

A. The only question I asked him in particular, it was——

(Testimony of J. B. Londono.)

Q. Just answer my question. Did you ask him anything about the bill of lading on the 26th when you went to see him? A. No.

Mr. Bunn: I think he is trying to answer the question.

Mr. Diether: That is all I want to know.

Q. On that occasion is when Mr. Stanley told you that the shipment was not the 2700 tons but 2300 tons? A. Yes.

Q. And you asked him if you could buy 2000 tons of the 2300 ton shipment?

A. At the first time I asked him if I could buy 1000 tons of galvanized wire, and I offered to pay to him any price, and he say no, he want to sell half galvanized and half black.

Then I inquired to have the right to buy 2000 tons.

Q. 2000 tons of the 2300 ton shipment?

A. Yes. [645]

Q. What did he say?

A. He say yes, you can get the credit or you can call Mr. Grinstein, supposed to be in Los Angeles that night.

Q. And you entered into no new written contract at that time, did you? A. No.

Q. Did you have any discussion about the contract? A. Not in particular.

Q. Did you assume that the contract that you had signed on July 12 was just merely amended so that the quantity instead of being 2700 tons would be 2000 tons? A. Yes.

(Testimony of J. B. Londono.)

Q. Did you assume that any other provisions of that contract would be amended?

Mr. Bunn: I object to the question as calling for a conclusion.

The Court: It is indefinite. Objection sustained.

Q. (By Mr. Diether): Was there any other discussion about any other provision of the contract at that time with Mr. Stanley? A. No.

Q. Nothing was said about a right of rejection of 300 tons of wire for any reason?

A. No. He gave me the right to select 2000 tons from the 2300 tons. [646]

Q. Have you told us all the conversation you had with Stanley on July 26 when you went to his office?

A. All I remember.

Q. Did you thereafter go to Mattoon's office and notify him that the shipment was not going to be 2700 tons but 2000? A. I don't remember.

Q. When did you first tell Mr. Sweeney that the shipment was going to be 2000 tons instead of 2700?

A. By sure the 31st of July.

Q. That is the first time you told him?

A. The first time I remember. Maybe I told him before, but the first time I remember by sure.

Q. Was anything said by Mr. Stanley on the 26th that the wire was of the same kind that you discussed on the 12th?

A. It was said that at least I will find in the lot 1000 tons of galvanized wire.

Q. That was all that was said about it?

A. It is all I inquired, yes.



(Testimony of J. B. Londono.)

Q. It is all you inquired about?

A. Yes.

Q. And he didn't tell you anything else about it?

A. Not in particular. He gave me the assurance that it would be at least 1000 tons of galvanized wire.

Q. Nothing was said on the 26th about terms of payment? [647]

A. No. He asked me to get the credit for the next day or to call Mr. Grinstein the next day, but I went to the bank and made application for the credit.

Q. Did you refer to the terms of payment under your contract, your sales order, specifying a letter of credit for \$160,000 and one for \$128,900?

Mr. Bunn: That question has been asked and answered several times. I object to the repetition of it on that ground. [648]

The Court: I don't know when it was.

Mr. Diether: This is July the 26th in Mr. Dulien's office, when he was told for the first time that the shipment would not be 2700 tons, but 2300 tons. I am asking him——

The Court: If they had any discussion concerning the terms——

Mr. Diether: ——of payment. Correct.

The Court: At that time.

The Witness: I say that I will open the credit the next day for the complete volume of 2,000 tons; that is, \$214,000.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): You said you would open a credit for \$214,000? A. Yes.

Q. That's all that was said? A. Yes.

Q. You went to the bank on the afternoon of July the 26th—— A. Yes.

Q. ——the first time in connection with this transaction?

A. Yes. It was the first time I talk about this transaction. I was there before, but Mr. Schroeder was out of the office.

Q. Did you sit down at Mr. Schroeder's desk?

A. Yes. [649]

Q. In the foreign department? A. Yes.

Q. And that's where you had your discussion with him? A. Yes.

Q. And no one else was present?

A. Mr. Rendon.

Q. Just Mr. Rendon, yourself, and Mr. Schroeder? A. Yes.

Q. At what time of day was that?

A. It was in the afternoon.

Q. What hour?

Mr. Bunn: If you know.

The Witness: It was after 1:00 o'clock. Maybe after 2:00 o'clock.

Q. (By Mr. Diether): And you told Mr. Schroeder at that time that you were purchasing 2,000 tons of barbed wire from Mr. Dulien at \$107 a ton? A. Yes.

Q. And you wanted to buy a letter of credit for \$214,000? A. Yes.

(Testimony of J. B. Londono.)

Q. And you wanted to turn in your letter of credit that you had issued to you in July?

A. Yes.

Q. And you wanted to borrow the difference?

A. Yes.

Q. Did you tell him how you were going to pay that loan?

A. Yes.

Q. How?

A. I told him that I will require a letter of credit from Colombia.

Mr. Diether: Just a moment. Did he say "require"?

The Court: Acquire.

Mr. Bunn: He says "require." That is his form of expression. He said he would require. That is what he consistently says and that is what I understood him to say.

The Witness (Through interpreter): I would ask for a letter of credit from Colombia. I was expecting to get a letter of credit from Colombia.

Q. (By Mr. Diether): Did you tell Mr. Schroeder anything about this letter of credit you were expecting from Colombia?

A. (Through interpreter): I have offers from Colombia up to a million dollars at that time, and, of course, it was easy.

Q. When did you tell Mr. Schroeder that you would secure this letter of credit from Colombia?

A. (Through interpreter): For the next week.

Q. The next week?

(Testimony of J. B. Londono.)

A. I told him I will have new credits the next week. [651]

Q. You were there on a Friday, and you would have it the following week?

A. Yes. "A week or two weeks," I think I say to him.

Q. Is that all you said about getting the letter of credit? A. I think so.

Q. All the negotiations with Mr. Schroeder at that time were in English, weren't they?

A. Yes.

Q. Mr. Rendon didn't have to interpret for you? You spoke to Mr. Schroeder in English, and he spoke to you in English?

A. Yes, but Mr. Rendon take a place in the conversation—(through interpreter) and possibly made it clear something that I did not understand.

The Court: In other words, you would have discussions with Mr. Rendon in Spanish?

The Witness: Yes, your Honor; always.

Q. (By Mr. Diether): Did you tell Mr. Schroeder at that time that Mattoon & Company was your agent for the reshipment of this wire?

A. Yes.

Q. Did you tell him that the shipping documents were to be delivered to Mattoon & Company?

A. I told him that Mattoon & Company will handle the [652] shipments.

Q. Did you tell him anything about the shipping documents?



(Testimony of J. B. Londono.)

A. When I said he will handle the shipments means that he will handle the documents, too.

Q. It means that he will handle the documents?

A. Yes.

Q. That was said on the 26th?

A. The 26th or the 27th.

Q. Was there any discussion with Mr. Schroeder on the 26th about the bill of lading for this 2,000 tons of wire?

A. Not in particular.

Q. Was it discussed at all on the 26th?

A. Our conversation took place on the basis that I wanted to buy one letter of credit for \$214,000 in order to buy barbed wire from Dulien; that I will give the bank \$160,000 that I had from Colombia, and that I wanted a loan for \$54,000 to complete the payment; that the barbed wire will be shipped to Colombia.

Q. Mr. Londono, I asked you, did you discuss with Mr. Schroeder on July the 26th anything about the bill of lading by which this 2,000 tons of wire was being shipped from Honolulu to Los Angeles?

A. I don't remember in particular, because Mr. Schroeder stopped the conversation—(through interpreter) [653] Mr. Schroeder considered that the transaction was feasible, but he would have to consult the next day with some higher officials.

Q. Have you told us all the discussion you had with Mr. Schroeder on July the 26th?

A. In essence, yes, and I remember I left with Mr. Schroeder the contract signed between Dulien and I.

(Testimony of J. B. Londono.)

Q. Did you go back the next day?

A. Yes, the next day, in the morning.

Q. What time did you go in the morning?

A. It was about 10:00 o'clock.

Q. Was Mr. Rendon with you? A. Yes.

Q. Where did you see Mr. Schroeder on that occasion?

A. At his desk in the foreign department.

Q. What did he say at that time?

A. He said that he agreed to open the credit, that he will charge me one-half per cent. I say, "This is a little high." I say, "I will ask you charge me one-fourth of one per cent." He agree. He ask me again when I will have money from Colombia. I say maybe in the next week, and that at the same time I had on hand the invoice to collect \$160,000 from the bank, and Mr. Schroeder agreed to open the credit. Then we start to make the application for the credit.

Q. Now, before you get to that, have you told us everything [654] up to the time you talked about the application (interpreted)?

A. I can't separate. (Through interpreter) I could not separate the conversation that took place before, when the credit was issued, or after the credit was issued.

Q. All that discussion you had with Mr. Schroeder was in English? A. In English, yes.

Q. Were you at Mr. Schroeder's desk the entire time you were at the bank that day?

(Testimony of J. B. Londono.)

A. Read me the question, please.

(The question was read by the reporter.)

A. No. After the application was made I left Mr. Schroeder's desk, and I waited in—(through interpreter) I waited in another place of the foreign department.

Q. But when you discussed the application, you were at Mr. Schroeder's desk?

A. Yes, and when he dictated the credit, I was at his desk, too.

Mr. Diether: May I see Plaintiff's Exhibit 4, please?

(The document was handed to counsel.)

Mr. Bunn: Is that the one he took away from the bank with him?

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 4, which is your application to the bank for a letter of credit [655] for \$214,000. You signed that on the day that you were there? A. Yes.

Mr. Bunn: On July 27th, he was there.

The Witness: Yes. Obviously, yes.

Q. (By Mr. Diether): And did you have a blank form to fill out prior to the time that you signed that document (interpreted)?

Mr. Bunn: For him to fill out, he said.

Mr. Diether: Yes.

The Witness: I don't remember.

Q. (By Mr. Diether): Wasn't it true that Mr. Schroeder filled out that form without any word from you what to put in it?

(Testimony of J. B. Londono.)

A. (Through interpreter): Mr. Schroeder prepared this form after my conversation with him. This is the result of that conversation. (In English) At the time I require for the documents a clean bill of lading, and, in addition, an order freight prepaid, insurance certificate, commercial invoice.

The Court: You told Mr. Schoeder all that?

The Witness: Yes.

The Court: Before he filled that out?

The Witness: Yes.

Q. (By Mr. Diether): Will you tell us exactly what you [656] told Mr. Schroeder at that time?

A. (Through interpreter): As I always do when I make an application for a letter of credit in Colombia, I write it on my own stationery, asking for clean bills of lading, insurance certificate, freight prepaid, and so forth.

Q. Do you remember distinctly telling Mr. Schroeder that you wanted a clean order bill of lading for the 2,000 tons of wire you purchased from Dulien?      A. Yes.

Q. I call your attention to your testimony at the time your deposition was taken, beginning on page 234, line 12.

The Court: Do you have the deposition there? The reporter probably took it. Page 234, line 12.

Mr. Diether: Line 21, I should say.

The Court: 21 to where?

Mr. Diether: Let me find it exactly.

The Court: Well, it would be line 18, because that fixes the date.



(Testimony of J. B. Londono.)

Mr. Diether: Yes, sir; I think it does.

The Court: To page what, line what?

Mr. Diether: Just a moment. I think to line 16, page 235.

Mr. Bunn: I would like for the witness to have a copy of that before him.

The Court: I will give it to him. You begin to read [657] here (indicating) and read over to here (indicating), and after you have read that to yourself, you will indicate, and counsel will ask you a question.

Mr. Bunn: Read the balance of the page, too, if you will; all of page 235.

The Court: Have you finished reading?

The Witness: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Diether): On that occasion you testified as follows, starting at line 18:

“Q. Did you at any time in your discussion on July 26th with Mr. Schroeder say that you wanted a clean, order bill of lading?

“A. I don’t remember the words I used, but obviously that was my intention, and that was what was done.

“Q. Why do you say it was obviously your intention?

“A. Because whenever I transact business involving maritime shipments or railroad shipments I make that one of the conditions.

“Q. But did you tell Mr. Schroeder”——

(Testimony of J. B. Londono.)

Mr. Bunn: Pardon me. That is "But you did" and not "did you."

Q. (By Mr. Diether, continuing reading): [658]

"Q. But you did not tell Mr. Schroeder on July 26th that you wanted a clean, order bill of lading on this wire you purchased from Dulien?

"A. Probably I did say that.

"Q. Do you remember distinctly that you told him that?

"A. I must have told him.

"Q. What did Mr. Schroeder say about that?

"A. Mr. Schroeder agreed to open letter of credit in accordance with the instructions in my application.

"Q. Who prepared the application?

"A. The bank. The bank always prepares these applications on their own forms.

"Q. Did you tell anyone what to put in that application for letter of credit?

"A. Obviously I must have told Mr. Schroeder."

You so testified at that time?

Mr. Bunn: Will you read the next two questions?

Mr. Diether: Yes.

Q. (By Mr. Diether, continuing):

"Q. When did you tell him?

"A. It must have been 26th of July or 27th of July.

"Q. Will you give us, as nearly as you [659]

(Testimony of J. B. Londono.)

can, the words you told Mr. Schroeder with respect to what documents you wanted the bank to secure before it paid that letter of credit?

“A. When I required of Mr. Schroeder, which textable, which actual words, I don’t remember, but they must have been used for my application for the letter of credit, or in.”

Mr. Diether: Is that what you want?

Mr. Bunn: Yes.

Q. (By Mr. Diether): What makes you positive now that you told Mr. Schroeder that you wanted a clean order bill of lading and at the time your deposition was taken you testified and said that obviously was what you told him?

A. My recollection now permit me to say.

Q. It has been refreshed, has it?

A. Yes. [660]

Q. What has refreshed your recollection?

A. My good memory.

Q. Is that all?

A. And my condition now, my physical condition now.

Q. In other words, you just remember now and you didn’t when your deposition was taken?

A. I beg your pardon?

Q. You remember now but you didn’t remember when your deposition was being taken?

A. I remember now, yes.

Q. Your deposition was taken at least a year ago, wasn’t it?

(Testimony of J. B. Londono.)

The Court: The date speaks for itself.

You have been thinking about this a lot? Have you been thinking about this a lot?

The Witness: Oh, yes, your Honor. Two years.

Q. (By Mr. Diether): Did you tell Mr. Schroeder on July 27th to deliver the bill of lading to Mattoon?

A. I told Mr. Schroeder that Mattoon will handle the shipments.

Mr. Diether: May the answer be stricken and may the witness be instructed to answer the question?

The Witness: I don't remember it in particular I say Mr. Schroeder to deliver Mattoon and Company the bill of [661] lading.

\* \* \*

The Witness: It was obviously known by the bank that Mattoon will handle the documents because the 29th, when the credit was made, the bank had drawn to Mattoon & Company the instructions.

Q. (By Mr. Diether): Do you now say you told Mr. Schroeder to deliver the bill of lading to Mattoon & Company on July 27? A. No.

Mr. Bunn: He did not so state.

Q. (By Mr. Diether): I call your attention to your testimony on page 119, starting with line 23.

The Court: Well, now, where before that will you pick up the date?

Mr. Diether: This is all I think a discussion of—just a moment.



(Testimony of J. B. Londono.)

The Court: This date is on the 31st of July, according [662] to page 117.

“Q. When was the next time you went to the bank after the 27th of July?

“A. On the 31st of July.”

That is the only date that is last mentioned before you come to this question on page 119.

Mr. Diether: If your Honor will note right in line 19 it says——

Mr. Bunn: What page?

Mr. Diether: Page 119, line 17: “Did you have an appointment with Mr. Sweeney for this occasion or do you know why he was in the bank?”

The Court: But that is July 31, according to the previous testimony.

Mr. Diether: Mr. Dasteel called my attention to page 115, line 20.

Mr. Hubert Morrow: Are you abandoning the other now?

Mr. Diether: No, I am not. He just called my attention to it as a date.

I don't believe that this question, your Honor, is directed to any particular time since your Honor will recall that this witness testified on his direct examination here, at page 261, line 3, that he never instructed the bank to deliver the bill of lading to Mattoon. And that is his testimony, as I understand it, from the record. [663]

The Court: The plaintiff introduced a document and marked it here, a letter, written July 31, Exhibit 11.

(Testimony of J. B. Londono.)

Mr. Diether: That is Exhibit 8.

The Court: Let me see it.

(The document referred to was passed to the Court.)

The Court: And all this testimony here and this conversation you are talking about now from the deposition relates to——

No, that is not the one. It is the one with the letterhead cut off.

(The document referred to was passed to the Court.)

The Court: This, according to the deposition, relates to a conversation on July 31, and if it is for the purpose of refreshing his recollection that is one thing, but if it is for the purpose of impeaching him it is not impeachment because he has not yet testified to the contrary of what appears in this portion of the deposition.

Q. (By Mr. Diether): Did you ever tell the bank to deliver the bill of lading for 2,000 tons of wire to Mattoon & Company?

A. When I say the bank that Mattoon & Company will handle the shipments, obviously I authorized the bank to deliver the bill of lading to Mattoon. I don't say in particular, "Mr. Schroeder, please deliver the bill of lading to Mr. Sweeney." I say that Mattoon will handle the shipments [664] and that means that they will handle all documents.

Q. Including the bill of lading?

A. Obviously, yes.

(Testimony of J. B. Londono.)

Mr. Diether: If that is the witness' testimony I don't care to——

The Court: That coincides with his testimony here.

“Q. Do you recall instructing a representative of the Citizens Bank to deliver to Mr. Sweeney the bill of lading or other documents involved in this shipment? When I say Mr. Sweeney I mean Mr. Sweeney or some other representative of Mattoon & Company.”

This is on page 119, line 23.

Then on page 120, line 2:

“A. I instructed to Mr. Schroeder of the bank to surrender the documents on this transaction to Mattoon & Company, to whom I would give specific instructions as to the shipments to South America.

“Q. When you say you instructed Mr. Schroeder at the bank to deliver the documents to Mr. Sweeney of Mattoon & Company, did you mean the bill of lading?”

Then objections.

“A. Documents; I said documents.

“Q. What documents did you have in mind?” [665]

More discussion. Then Mr. Dasteel asked:

“I want to know what he means by documents.”

Then the answer:

“A. Mr. Dasteel, we mentioned documents——

(Testimony of J. B. Londono.)

shipping documents, for instance commercial invoice, bill of lading, insurance certificate, bill of freight, railroad receipts.

“Q. In other words, you authorized Mr. Schroeder to deliver any documents involving the shipping of this merchandise to Mattoon & Company?

“A. That’s right.”

Mr. Diether: You are reading from the deposition?

The Court: I am reading from the deposition.

Mr. Diether: Let me call your Honor’s attention to the testimony of this witness, which was taken on April 21, 1950, at page 261, line 3, question by Mr. Bunn:

“Mr. Londono, did you at any time by word of mouth as distinguished from by writing, instruct the bank to deliver the bill of lading to Mattoon & Company?

“A. No, not that I remember.”

The Witness: Not in particular the bill of lading. I never used the word “bill of lading.” [666]

\* \* \*

Q. I show you Plaintiff’s Exhibit 5-A, which is the letter of credit guarantee. You signed that on July 27? A. Yes.

Q. And before you secured the letter of credit for \$214,000? A. At the same time.

The Court: At the same time, was the answer?

The Witness: Yes, your Honor.



(Testimony of J. B. Londono.)

Q. (By Mr. Diether): And this is the same form of letter of credit guarantee that you had signed in the bank for the previous letters of credit that you had purchased in the early part of 1946?

Mr. Bunn: If you know.

The Witness: I suppose the same letter of credit.

Q. (By Mr. Diether): The same letter of credit guarantee you mean? A. Yes.

Q. Did you read it? A. No.

Q. Have you ever read it? [667]

A. No. Do you read the insurance policy, for instance?

The Court: What was that?

Mr. Bunn: Do you read the insurance policy, for instance?

Q. (By Mr. Diether): You never have read it?

A. No.

Q. But you didn't make any objection to signing it? A. No.

Q. At the same time you handed Mr. Schroeder this invoice to Mr. Echavarria in Colombia?

A. Yes.

Q. And that calls for a thousand tons of galvanized new wire? A. Yes.

Q. Why did you put in "new" wire?

A. Because——

Q. You weren't buying new wire from Dulien.

A. No make difference, new wire and unused wire.

Q. You don't think it makes any difference in the value?

(Testimony of J. B. Londono.)

A. The galvanized wire that Dulien show me, it looked new wire, brand new wire, and I supposed to have 1,000 tons of the same wire. [668]

\* \* \*

Q. (By Mr. Diether): Just before the noon recess I was asking you about Plaintiff's Exhibit 9, which is your invoice to Mr. Echavarria for 1,000 tons of galvanized wire. Did you ever send to Mr. Echavarria an amended invoice?

A. I sent it to him one copy of this invoice, with the correction of the date, 27th instead of the 24th, and I say, "This is a provisional invoice in order to collect from the bank \$160,000. You will have the right to—(through interpreter) to accept the price when the wire is received by you."

Q. Do you have that invoice? [670]

\* \* \*

The Witness: I don't know. I am not sure that I have.

\* \* \*

Q. I believe you stated this morning that it was always your practice when you purchased letters of credit to pay for merchandise which you were buying in this country to require an order bill of lading.

A. Yes.

Q. Is that your testimony?

A. Yes. Particularly on—

The Court: He said this morning when it was either shipped by boat or by rail.

The Witness (Continuing through interpreter):  
—particularly on shipments that were going from

(Testimony of J. B. Londono.)

one country to another; from one port to [671] another.

\* \* \*

Q. (By Mr. Diether): I show you Defendant Bank's Exhibits C-A1 and C-A2, which purports to be an application by you for a letter of credit from the defendant bank, dated February 26, 1946, and a copy of the letter of credit that was issued pursuant to that application. Does that exhibit C-A1 bear your signature? A. Yes, it does.

Q. Does that letter of credit call for an order bill of lading?

The Court: Is it a letter of credit?

Q. (By Mr. Diether): I should say an application for the letter of credit. As a matter of fact, it calls for a straight bill of lading, doesn't it, Mr. Londono? Just answer the question "Yes" or "No."

A. No. This letter of credit—this application was made on railroad shipments from the United States Government directly, which barbed wire I sold. I expected—I knew, with the Government, will be cheap, and I saw it was not necessary to require any special documents from the United [673] States Government because the material, it was inspected for me several times, and I knew that the material was from the Government.

Mr. Diether: May the answer be stricken and the witness instructed to answer the question?

Mr. Bunn: I don't think the answer should be stricken.

(Testimony of J. B. Londono.)

The Court: The document will speak for itself, and I think the witness is entitled to make a statement in connection with the document. The motion to strike will be denied.

Q. (By Mr. Diether): You also at that same time signed Defendant Bank's Exhibit C-A2, didn't you, on the reverse side, Mr. Londono?

A. Yes. It is my signature.

Q. And that is the letter of credit guarantee?

Mr. Bunn: On the other side, Mr. Londono. He is asking you to look at the back side of it.

Mr. Hubert Morrow: What exhibit do you call that?

Mr. Diether: That is defendant Bank's Exhibit C-A2.

Mr. Hubert Morrow: A-2?

The Court: C-A2.

The Witness: It is my signature.

Mr. Diether: C-A2.

The Court: "C" for Citizens Bank.

Mr. Hubert Morrow: I thought there was a C-A and a C-AB.

The Court: No. Exhibit "A" has two sheets, and so does [674] Exhibit B. So it is C-A1 and -2, and C-B1 and -2.

Mr. Hubert Morrow: Thank you very much.

Q. (By Mr. Diether): You signed that letter of credit guarantee? A. Yes, sir.

Mr. Diether: We will offer C-A1 as Defendant Bank's next exhibit.



(Testimony of J. B. Londono.)

The Court: Admitted.

(The document referred to, heretofore marked as Defendants' Exhibit C-A1 for identification, was received in evidence.) [675]

Q. (By Mr. Diether): I show you, Mr. Londono, Exhibit C-B-1 for identification, which purports to be your application to the defendant bank for a letter of credit, dated February 18, 1946. Is that your signature at the bottom of that paper?

A. Yes, in favor of War Assets Corporation. That means the United States Government.

Q. And that application calls for a straight order bill of lading, does it not?

The Court: A clean one?

Mr. Bunn: Straight order bill, Mr. Diether?

Mr. Diether: I should say straight bill of lading.

The Court: Clean straight?

Mr. Diether: Clean straight.

The Court: C-A-1 calls for a clean straight.

The Witness: Calls for the evidencing of 75,000 coils barbed wire, twisted, galvanized and unused for 1.28 yards the coil, each coil 28 pounds, and when it says the War Assets Corporation I mean the United States Government.

Q. (By Mr. Diether): Will you just answer my question? That application calls for a clean straight bill of lading, doesn't it?

A. The application call—yes.

Q. Yes.

I show you now Defendant Bank's Exhibit C-B-2

(Testimony of J. B. Londono.)

for identification, [676] which purports to be a letter of credit which was issued pursuant to the application which I have just shown you, and ask you if you have signed the letter of credit guarantee on the reverse side.      A.    Yes.

Mr. Diether: We offer those as defendant bank's next exhibits in order.

The Court: Admitted.

The Clerk: C-A1 and 2, and C-B1 and 2.

(The documents referred to, previously marked Defendants' Exhibits C-A2 and C-B1 and C-B2, for identification, were received in evidence.)

The Court: Did you have your dealings in connection with these with Mr. Schroeder?

The Witness: Yes, your Honor.

The Court: Both of them?

The Witness: Yes.

Q. (By Mr. Diether): I show you, Mr. Londono, what purports to be your draft on the defendant bank for \$160,000. Did you sign that?

A. Yes.

Q. And you delivered it to the bank on July 27?

A. Yes.

Q. And that is your signature on the reverse side?      A. Yes, it is.

Q. Bearing the endorsement? [677]

A. Yes.

Mr. Diether: We will offer that as defendant bank's next exhibit.

The Clerk: C-C.

(Testimony of J. B. Londono.)

The Court: In evidence.

(The document referred to was marked Defendants' Exhibit No. C-C and received in evidence.)

Q. (By Mr. Diether): You received the letter of credit for \$214,000 about what time of day on July 27?

A. Between 10:00 o'clock and 12:00 o'clock.

Q. And then what did you do after you received it?

A. I went to Dulien's place and delivered the letter of credit to Mr. Grinstein in person.

Q. Was anyone with you?

A. Mr. Arturo Rendon.

Q. Did you have any discussion with Mr. Grinstein that day?

A. No, in this conversation I delivered to him the letter of credit, he saw the letter of credit, supposed to read the letter of credit, he accepted. I told him, "This is big business for me," and he say, "It is big business for me too."

Then I asked him for one option for the balance of 300 tons of wire, and he agreed to give me the option.

The Court: Had you seen any of the wire up to that time? [678]

The Witness: No, your Honor.

Q. (By Mr. Diether): Did you have any discussion about the bill of lading by which this 2,300

(Testimony of J. B. Londono.)

tons of wire was being shipped from Honolulu to Los Angeles with Mr. Grinstein on that occasion?

A. No.

Q. Did you ask anything about it?

A. No, because he saw the letter of credit.

Q. You have answered the question.

A. And made no objection to the correction of the letter of credit.

Q. But you had no discussion with him about it, did you? A. Not any in particular.

Q. Did you have any discussion with him about the right to reject 300 tons for excessive weathering?

A. No.

Q. You didn't discuss that? A. No.

Q. Didn't he tell you on that day that the "White Squall" had arrived the previous day?

The Court: Just a moment.

The Witness: That is right.

The Court: He wants to say something.

The Witness: He gave me the right to take the first [679] 2,000 tons of barbed wire.

Q. (By Mr. Diether): The best 2,000?

A. The first 2,000.

Q. The what?

Mr. Bunn: The first 2,000.

The Witness: The first. In other words, to take the first, to have the right to.

The Court: The first right to take 2,000 tons, is that what you mean?

The Witness: That is, your Honor. Thank you.



(Testimony of J. B. Londono.)

Q. (By Mr. Diether): You mean that first 2,000 tons that came off the boat?

A. (Through interpreter): The right to have 2,000 tons before he take 300 tons.

Q. Did he say that you could have the best?

A. I don't remember if he in particular, we used that word.

Q. You don't remember that?

A. Not in particular. I had the right to take 2,000 tons and I supposed——

The Court: That you would have your choice?

The Witness: Choice, yes.

Q. (By Mr. Diether): Didn't he tell you on that occasion that the White [680] Squall had just arrived the day before?

A. I don't remember if he told me the day before. He told me that the White Squall, it was already in Long Beach.

Q. He told you that day?                      A. That day.

Q. You went down to the harbor that afternoon?

A. Yes, and I saw the White Squall.

Q. When was the next time that you had any conversation with any representative of the bank in connection with this transaction?

A. If Mr. Moran represented the bank, it was the 29th of July.

Q. When he called you on the telephone?

A. He called me on the telephone.

Q. What did he tell you then?

A. He told me, "Mr. Londono, this is Moran from the bank," and I recognized his voice, and said

(Testimony of J. B. Londono.)

that we have the documents from Dulien and we have the discrepancies that the documents—he used the word “documents”—showed 2,300 tons instead of 2,000 tons, and I said, “That don’t make any difference to me, I had an appointment with Dulien to take 2,000 tons, the credit was opened for 2,000 tons, no question about it.” Then I agreed to accept the documents showing 2,300 tons instead of 2,000 tons.

Q. You then told Mr. Moran that you had the right to [681] take 2,000 tons of the 2,300 ton shipment?  
A. Yes.

Q. Did Mr. Moran mention the fact that he had the bill of lading?

A. He mentioned the word “documents.”

Q. He didn’t say bill of lading?

A. Not that I can remember.

Q. I call your attention to your deposition on page 35, line 22, the question being at line 21.

A. (Examining deposition.)

The Court: Better begin reading at line 13 which indicates the date.

Mr. Diether: Yes, all right.

Mr. Laven: What page?

Mr. Diether: Page 35.

Q. Have you read it? A. Yes.

Q. At the time that your deposition was taken, did you testify as follows:

“Q. Who did you talk to next, which one of the parties did you talk to?

“A. The next time it was Monday, the 29th of July. I was at the Hotel Clark—

(Testimony of J. B. Londono.)

“Q. Is that where you were residing at that time? [682]

“A. Yes—and Mr. Moran—I don’t know his first name—called me in the morning about 10:00 o’clock.

“Q. You mean Mr. Moran of the bank?

“A. Of the bank—and he told me that he had the documents from Dulien.

“Q. Did he say what documents he had?

“A. The first time he said the documents. He explained that the bill of lading show 2,300 tons instead of 2,000 tons, and he asked me about that difference between the letter of credit and the bill of lading. I answered that I agreed with Dulien to take 2,000 tons instead of 2,300 tons. No more then.”

The Court: “Ten minutes later,” is the rest of his answer.

Mr. Diether: I think that is correct.

Q. You so testified? A. Yes.

Q. Does that refresh your recollection now that you did mention the bill of lading?

A. No. I said, I heard from him the word “documents” and my conclusion on this deposition is that he mentioned the bill of lading but I can’t say now, no make any recollection about the fact that he mentioned the word “bill of lading.” [683] It was my conclusion.

\* \* \*

Q. Which is the truth, that he did mention the bill of lading or that he didn’t?

(Testimony of J. B. Londono.)

A. My recollection and my intention is to say when I made this deposition that he used the word "documents." I don't remember if he used the word "bill of lading."

Q. Did Mr. Moran tell you who the consignee of this bill of lading was?

A. No mention about it.

Q. Didn't he tell you that it was a straight bill of lading in which Dulien was the consignee?

A. No.

Q. Did he call you again that same day?

A. Yes, about 10 minutes later.

Q. What did he say then?

A. He called me about this question, if necessary or convenient—I understood convenient; in Spanish we use the word "convenient"—to get from Dulien a letter specifying the fact that I will have 2,000 tons instead of 2,300 tons. I say I know it isn't necessary because my agreement with Dulien is that I will have the right to take 2,000 tons. I don't refuse his suggestion. I say I think it not necessary. [684]

Q. Did he mention the fact that it was a straight bill of lading in the second conversation, that the merchandise was consigned to Dulien? A. No.

Q. He didn't mention that at all?

A. Not at any time.

Q. Did Mr. Moran mention the fact that he told you that he already called Dulien? A. No.

Q. About this matter?

A. Not that I can remember.



(Testimony of J. B. Londono.)

Q. Did he say that he talked to Mr. Sweeney on the telephone about it? A. No.

Q. Or that he talked to Matson? A. No.

Q. Isn't it a fact, Mr. Londono, that on the first conversation, or the second conversation you had with Mr. Moran, you said, "I am in a hurry to ship this wire to Colombia and I don't want anything to hold up the shipment"?

A. (Through interpreter): I don't recall to have said anything like that.

Q. Did you tell him to accept the documents that he told you about?

A. I told him that no make difference to me, the fact [685] that the documents he mentioned shown 2,300 tons or 2,000 tons. Then obviously I admitted that he accepted the documents. [686]

Q. You told him to accept the documents?

A. No. I told him I don't care about the question that the documents show 2,300 tons or 2,000 tons.

Q. You didn't say anything about accepting the documents? A. No.

Q. Didn't mention that? A. No.

Q. Have you told us all now that Moran told about securing the letter from Dulien? Have you told us all the conversation that you had at that time with respect to what Mr. Moran said about getting a letter from Dulien to permit you to get 2,000 tons of wire?

A. I said that—I told him it was unnecessary, in my opinion, to get a letter from Dulien.

Q. Did he call that a turnover letter?

(Testimony of J. B. Londono.)

A. I don't remember that word.

Q. You don't remember that?

A. No. That word, I think, in translation—our conversation it was in Spanish, and that word, I don't know the translation in the Spanish, and he could not use that word.

The Court: There is no such phrase in Spanish?

The Witness: No. No, your Honor.

Q. (By Mr. Diether): Did Mr. Moran tell you that he was [687] going to pay the letter of credit for \$214,000 on the documents?

A. Not that I remember.

Q. When did you first learn that the bank had paid the letter of credit for \$214,000?

A. When I knew as a fact, the 31st of July.

Q. That was the first time?

A. Yes, that I knew.

Q. After Mr. Moran talked to you on the telephone on July the 29th, did you have any conversation with Mr. Sweeney that day?

A. I had conversations with Mr. Sweeney during the whole months of July and of August, and in particular I don't remember any conversation the 29th.

Q. Did you call Mr. Sweeney at any time on the 29th or 30th and tell him that the letter of credit had been paid and that the documents would be coming over soon, and to make arrangements to pick up this wire at Pier A?

A. Not in particular.

Q. You don't remember anything about that?

A. In particular, no.

[Testimony of J. B. Londono.]

Q. You went to the dock in the afternoon of July 29th, didn't you?      A. Yes.

Q. How many coils of wire did you see [688] then?      A. I saw small quantities.

Q. How many rolls?

Mr. Bunn: You mean, did he count it?

Mr. Diether: His estimate; his best estimate.

The Witness: I can't say how many rolls.

Q. (By Mr. Diether): Was it two or three thousand?

The Court: How much space did they cover?

The Witness: I can't say, your Honor. (Through interpreter): I saw wire on the pier. Could have been 100 rolls or 100 tons of wire. It was rather late.

Q. (By Mr. Diether): You went down again the next day with Mr. Rendon?      A. Yes.

Q. And the Colombian lawyer?

A. Yes, Mr. Silva Herrera.

Q. How much wire did you see that day; that is, on July 30th?      A. I don't remember.

Q. Was it more than you saw the day before?

A. (Through interpreter): I didn't try to establish any comparison between the wire I had seen the previous day. It is possible that there was a larger quantity if the discharge or unloading had proceeded.

Q. Can you estimate how many rolls?

A. No. [689]

Q. At the time your deposition was taken, I call your attention to page 196, line 13—

(Testimony of J. B. Londono.)

Mr. Bunn: Oh, that elusive copy of the deposition has eluded me again. I guess it is in the reporters' room.

The Court: Just a moment.

Mr. Diether: I will read from line 11 through line 13 on page 196.

The Court: Those few lines marked there (handing deposition to witness).

The Witness: Thank you, your Honor. Yes.

Q. (By Mr. Diether): Did you testify at that time as follows:

"A. The next day, July 30th.

"Q. What quantity of the wire did you see at that time?

"A. Several thousand coils. I don't know how many."

You so testified?

A. Yes. (Through interpreter): I cannot deny that testimony. It is possible that I said that.

Q. I couldn't understand what you said.

A. (Through interpreter): I cannot deny that testimony. It is possible that I said that.

Q. Were there any chalk marks on the dock at that time? [690]

A. Not that I remember, at that particular time.

Q. Did you know at that time that any of the wire on the dock was for Gonzalez and Blanco?

A. (Through interpreter): Yes, I supposed.

Q. Did you see anybody down there from Gonzales and Blanco?



(Testimony of J. B. Londono.)

A. No, Mr. Diether. It was about 6:00 or 6:30. I left the hospital the 30th very late.

Q. Did you make any inquiry at that time as to whether the wire that you saw was the wire which belonged to you?

A. No one person on the dock at that time. I don't make any inquiry.

Q. Did you make any inquiry at any time on the 29th and 30th of anybody on the dock as to which was your wire?

A. No people there on the 29th, at the time I was there. No people on the 30th.

Q. Did you see any rusty wire there on the 29th?

A. Yes.

Q. On the 30th?

A. Rusty, and galvanized, and black.

Q. Did you see any rusty wire on the 30th?

A. Yes.

Q. And you made no attempt to inquire whether that was your wire there or not?

A. No people there, Mr. Diether [691]

Q. You did not go down at any other time of the day?

A. No. I was in the hospital all day.

Q. Did you have any other business to look after in Los Angeles?

The Court: He said he was in the hospital.

Q. (By Mr. Diether): When were you in the hospital? A. I was in the hospital the 30th.

Q. On the 30th?

(Testimony of J. B. Londono.)

A. The 30th, during the day. (Through interpreter): July the 30th I was in the hospital.

Q. When did you get out of the hospital on the 30th?

A. (Through Interpreter): I didn't—I wasn't confined to the hospital. I was taking an examination.

The Court: What time did you get through?

The Witness: I don't remember, your Honor.

The Court: You went directly from the hospital to the pier?

The Witness: No, your Honor, because I had no car. I had come from the hospital to Mr. Rendon, and at the time he was available, it was about 5:00 o'clock, we went to Long Beach. I had no car at the time. I didn't know how to drive, how to go there, and it was late. I remember it was later than 6:30 in the evening.

Q. (By Mr. Diether): What time did the demurrage start on this 2,000 tons of wire of yours?

A. I beg your pardon?

Q. Ask him in Spanish.

The Interpreter: What is the question?

Q. (By Mr. Diether): When did demurrage start on your 2,000 tons of wire (interpreted)?

A. I don't remember. I don't know. I have not the records.

Q. Did you plan to leave all of your 2,000 tons of wire right on the dock until you could find shipping space to send it to South America?

Mr. Bunn: I object. It is immaterial what he planned to do. What he did is important.

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): All right. Did you make any arrangements for ground storage for this 2,000 tons of wire?

A. No, because we supposed at the time I bought the wire from Dulien that the wire will be good, and no troubles, not any delay to ship.

Mr. Diether: May the answer be stricken and the witness required to answer?

The Court: He answered it. He said "No," and then he explained his answer. The answer may not be stricken.

Q. (By Mr. Diether): On July the 30th, how much space did you have reserved for shipment to South America?

A. We had inquired for 2,000 tons, but the only quantity available at that particular day, it was 112 tons or 120 tons [693] to Cartagena.

Q. Then on July 30th all the space that you had available or reservation for to ship wire to South America was 120 tons?

A. (Through interpreter): It was a confirmed booking of 120 tons.

Q. And you didn't know when you could ship the balance?

A. (Through interpreter): I was expecting that I could ship all of it during the month of August.

Q. But you didn't make any arrangements to move it from the dock to ground storage?

A. (Through interpreter): Mr. Sweeney had

(Testimony of J. B. Londono.)

the power or my authorization to make all those arrangements.

Q. Did you instruct to do that?

A. Yes.

Q. Get ground storage? Did you instruct Mr. Sweeney to get ground storage?

The Court: What do you mean by "ground storage"? Covered storage?

Mr. Diether: No, any place other than on the dock where they charge demurrage.

The Witness (Through interpreter): We expected that the wire would be shipped before demurrage was caused.

Q. (By Mr. Diether): You didn't make any arrangements, [694] then, for moving the wire from the dock prior to shipment to South America?

The Court: At that time.

Mr. Diether: At that time.

The Court: Well, it is obvious he didn't. He said it in every other way that he can say it.

Q. (By Mr. Diether): Do you know what instructions Mattoon gave on July the 29th or 30th relative to picking up your wire at the dock in Long Beach?

Mr. Bunn: Answer "Yes" or "No," please.

The Witness: Not in particular.

Q. (By Mr. Diether): You don't know. Mr. Sweeney didn't tell you that he had given any orders to pick up wire on the 29th or 30th?

A. Not that I remember.



(Testimony of J. B. Londono.)

Mr. Diether: May I see Plaintiff's Exhibit 14 and 12?

(The documents were handed to counsel.)

Q. (By Mr. Diether): Did you have any discussion with Mr. Sweeney about making a shipper's export declaration for 2,825 rolls of wire to be shipped on the Mormacreed at any time on July the 29th or 30th?

A. Yes. I asked Mr. Sweeney to make export declaration on the basis of \$107.00 per ton, plus the freight, plus all charges here in Los Angeles.

Q. This is Plaintiff's Exhibit 14, for identification. [695] When did you first see that?

Mr. Bunn: Is that an original document?

Mr. Diether: It is a photostatic copy.

The Court: Do you want to know when he first saw the document?

Mr. Diether: The original of that document.

The Witness (Through interpreter): I never saw it. I never took time for that.

Q. (By Mr. Diether): You didn't ever see that document, the original of it?

A. I don't remember.

Q. Did Mr. Sweeney ever show you Plaintiff's Exhibit 12, which is a delivery order to Matson for 2,825 rolls of wire? Did he ever show you the original of that, or a carbon copy?

Mr. Bunn: That is marked for identification only.

Mr. Diether: Yes, that is right.

(Testimony of J. B. Londono.)

The Court: What number?

Mr. Diether: 12.

Mr. Bunn: My document No. 12, for identification.

The Witness: Not that I remember.

Q. (By Mr. Diether): Did he ever talk to you about it?

A. No. That thing, that is a mechanical thing of the brokers.

Mr. Diether: I didn't hear that last. Will you read it, [696] please?

(The answer was read by the reporter.)

The Court: By that you mean that is a regular course of business?

The Witness: Yes, your Honor. [697]

Q. (By Mr. Diether): You don't recall having any conversation with Mr. Mattoon—I mean Sweeney, of Mattoon's office—to pick up any wire at Pier A on July 29 or 30?

Mr. Bunn: I object to the question as uncertain and indefinite and ambiguous. Does counsel mean for the picking up on that day or does he mean having a conversation on either one of those days?

Mr. Diether: Did he have a conversation?

The Court: Will you re-ask the question, please?

Mr. Diether: Yes.

Q. Did you have a conversation with Mr. Sweeney of Mattoon & Company on July 29 or July 30, relative to Mr. Sweeney picking up any wire for you on Pier A?

(Testimony of J. B. Londono.)

A. I don't remember in particular any conversation.

Q. Do you know whether Mr. Sweeney picked up any wire on Pier A for you either on the 29th or 30th? A. Not that I recall.

Q. On July 31, that was Wednesday?

A. Yes.

Q. And you said you went first to Mr. Sweeney's office? A. I say by sure.

Q. Is that where you went first that morning?

A. (Through interpreter): That is the time I was sure that I was there. [698]

Q. And how did you happen to go to Mr. Sweeney's office on July 31?

A. Because we had a shipment on hand and because I usually went to Mr. Sweeney's office.

Q. Nobody had requested you to go to his office?

A. (Through interpreter): I myself took the initiative.

Q. Did you have any discussion with Mr. Sweeney at his office that morning when you first arrived?

A. When I went to Mr. Sweeney's office and he tells me that Mr. Schroeder from the bank wants to see me and wants to see him, too, then we together went to the bank.

Q. Did he discuss with you any documents that he had received from the bank?

A. He told me that Mr. Schroeder wanted, asking for the bill of lading in order to have the en-

(Testimony of J. B. Londono.)

dorsement from Dulien, and we take the document with us.

Q. Did he show it to you?

Mr. Bunn: What?

Q. (By Mr. Diether): Did he show you this document that he is talking about? A. Yes.

Q. I show you Plaintiff's Exhibit 7. Is that the document he showed you in this office that morning?

A. Yes. [699]

Q. And you took it out and looked at it?

A. Yes.

Q. What did you do with it, put it in your pocket? A. Possibly, yes.

Q. Was Mr. Sweeney there looking at it with you? You both looked at it together? A. Yes.

Q. Did you have any discussion about it?

A. No.

Q. Then you put it in your pocket?

A. In my pocket, or anyway in my possession, or Mr. Sweeney's possession, and we went to the bank and we delivered the document to Mr. Schroeder.

Q. Did Mr. Sweeney show you any other documents that morning when you went to his office?

A. Not in particular that I remember.

Q. I show you Plaintiff's Exhibit 20 for identification, which purports to be a letter to Mattoon & Company dated July 29, 1946. Did he show you that letter at that time when you were at his office?

A. This letter? No.

Q. When did you first see that letter?



(Testimony of J. B. Londono.)

A. I suppose I saw the letter the 31st of July, when Mr. Schroeder in the bank delivered it to Mr. Sweeney of Mattoon & Company. [700]

Q. You think you saw it in the bank?

Mr. Bunn: He said he supposed.

The Witness: I supposed.

Q. (By Mr. Diether): Was that later in the morning? A. The afternoon.

Q. The afternoon? A. Yes.

Q. Did you read the letter at that time?

A. I don't recall, Mr. Diether.

Q. Was it given to you?

A. Given to Mr. Sweeney I think.

Q. Did you ever have possession of it?

A. Not that I remember. I remember the fact that Mr. Sweeney asked me the authorization to pay the insurance charge for the—(through interpreter) fire insurance on the dock, and I accepted, and told me that it had been requested by the bank.

Q. Then you read the paragraph in that letter about insurance?

A. I remember this paragraph.

Q. You saw this part of the letter?

A. Yes. I suppose Mr. Sweeney called my attention to that point and asked me if he can go ahead and make the insurance and accept the bill.

Q. Did you read the first part of the letter also at that time? A. Possibly, yes.

Q. The first sentence in that letter reads as follows:

“We enclose herewith Matson bill of lading,

(Testimony of J. B. Londono.)

LA-29, covering 4,599,948 pounds barbed wire, 2000 tons of which are to be shipped in accordance with instructions of Mr. J. B. Londono, subject to our approval."

The next paragraph reads:

"You will note the bill of lading is consigned to Dulien Steel Products, Inc., of California, and we request that you obtain a release from them of the 2000 tons (the remaining 300 tons approximately to be released to their order)."

You read that at that time, didn't you?

A. I suppose so.

Q. Did you make any objection to it?

A. Not in particular.

Q. Then you knew at that time that the shipment, the bill of lading, was a straight bill of lading, didn't you?

A. (Through interpreter): Possibly I read that but the most important fact at the time was that Mr. Schoeder gave us the document to have endorsed by Dulien.

Q. That is the document, Plaintiff's Exhibit 7? [702]

A. Yes.

Q. Which you said you saw in Mr. Sweeney's office?

A. Yes, and take it to the bank.

The Court: Is it your position that this mentions a straight bill of lading?

Mr. Diether: Consigned to Dulien.

(Testimony of J. B. Londono.)

The Court: But it does not say anything about a straight bill of lading.

Mr. Diether: A straight bill of lading means being consigned to a definite consignee which makes it a straight bill of lading.

We will offer that Plaintiff's Exhibit 20 for identification as the bank's exhibit next in order.

The Court: Admitted. That will be——

The Clerk: C-D, your Honor.

The Court: ——C-D.

(The document previously marked Plaintiff's Exhibit 20 was received in evidence as Defendants' Exhibit No. C-D.)

Mr. Bunn: What was that original number that it had?

The Clerk: No. 20.

Q. (By Mr. Diether): Did Mr. Sweeney——

The Court: By the way, did you know whether or not Mattoon & Company got the approval of the bank on the shipments that they made? [703]

The Witness: Yes, they had the approval.

The Court: Do you know how he did it, each one?

Mr. Diether: I think, your Honor, that that will develop in the testimony a little later.

The Court: Very well.

The Witness: Mattoon was the agent for J. B. Londono and for the bank in order to protect the bank's interests.

(Testimony of J. B. Londono.)

Mr. Diether: May the last portion of the answer be stricken?

Mr. Bunn: I think he is answering the court's question.

The Court: It is his conclusion, but I have heard the testimony.

Q. (By Mr. Diether): Mr. Londono, did Mr. Sweeney at the time that you were in his office state that he had received a letter from Dulien authorizing Mattoon & Company to accept 2000 tons of wire for your account? A. Not that I recall.

Q. I show you—(addressing Mr. Bunn) is this a photostat?

Mr. Bunn: That is a photostat.

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 13 for identification, which is a letter from Dulien to Mattoon & Company dated July 29th. Have you ever seen the original of that [704] letter?

A. Not that I remember.

Q. You never have seen it at all?

A. Not that I remember.

Q. Mr. Sweeney never told you that he had such a letter? A. No.

The Court: Did I understand you to say that you saw this letter of July 29th on July 31st?

The Witness: Yes, your Honor; in the bank.

The Court: In the bank?

The Witness: And called my attention to it because the first paragraph about the insurance against fire. He told me one point, called my attention to it.



(Testimony of J. B. Londono.)

The Court: When you saw this letter, in whose possession was it, Mr. Sweeney's or Mr. Schroeder's?

The Witness: I suppose Mr. Sweeney's hands, your Honor.

Mr. Bunn: May I admonish the witness to say what he knows and not what he supposes.

The Court: Yes. Well your recollection?

The Witness: My recollection is it was in Mr. Sweeney's hands.

The Court: Had they delivered it to him in your presence or did he have it in his office and bring it to the bank with him? [705]

The Witness: No, it was delivered to him in my presence.

The Court: On the 31st?

The Witness: Yes, your Honor.

The Court: We will have the afternoon recess.

(Short recess.) [706]

The Court: How do you like your new home?

The Witness: I like it very much, your Honor, I have good company.

Q. (By Mr. Diether): When you were in Mr. Sweeney's office the morning of July the 31st before you went to the bank, did Mr. Sweeney tell you that he had any wire picked up at Pier A for your account, and taken over to Moore-McCormack dock?

The Court: What date was that again, please?

Mr. Diether: The 31st.

The Witness (Through interpreter): I have

(Testimony of J. B. Londono.)

not said that I was at Mattoon & Company on the morning of July the 31st.

Mr. Hubert Morrow: May we have that answer, please?

(The answer was read by the reporter.)

The Court: Go ahead.

Q. (By Mr. Diether): Didn't you talk to Mr. Sweeney on the morning of July the 31st before you went to the bank? A. It was about noon.

Q. Oh, about noon. All right. When you were in his office about noon on July the 31st, did he tell you that he had had any wire picked up from Pier A in Long Beach and taken to the Moore-McCormack dock?

A. I don't remember if he told me.

Q. You went there later in the afternoon, didn't you? [707] A. Yes.

Q. How did you happen to go there (interpreted)?

The Witness: Will you give me the question?

Mr. Bunn: "Why," I thought was the question.

The Court: "How" is what he said. How did you happen to go there?

The Witness: After our conversation in the bank, and after we obtained the endorsement of the bill of freight from Dulien——(through interpreter) we stopped in Long Beach and we probably were informed that some wire had been moved to Moore-McCormack, and we went to see it.

Q. (By Mr. Diether): Who informed you?

(Testimony of J. B. Londono.)

A. (Through interpreter): We stopped by at Long Beach Pier——(in English) on the way to Moore-McCormack Line. (Through interpreter): For some reason I don't recall, I knew that the wire was there, and I went to see it.

Q. But you learned it from Mr. Sweeney or at the dock on Pier A (interpreted)?

A. (Through interpreter): It is probable that it was through Mr. Sweeney.

Q. But you didn't know it prior to the time you went to the bank (interpreted)?

A. (Through interpreter): I had not seen the wire at Moore-McCormack.

Q. Did he know it was at Moore-McCormack dock before [708] he went to the bank (interpreted)?

A. (Through interpreter): I do not remember.

Q. Who is the first person that you talked to when you and Mr. Sweeney went to the bank on July the 31st?

A. I suppose it was Mr. Schroeder.

Q. Did you see him up at his office in the foreign department?

A. Yes.

Q. Was anybody with you besides Mr. Sweeney?

A. I don't remember if Mr. Rendon was with us.

Q. What was the first thing that you said or Mr. Schroeder said to you on that occasion?

A. Mr. Schroeder called my attention to the fact the day before, one or two days before, he had called me. (Through interpreter): Mr Schroeder called my attention that he had called me on one

(Testimony of J. B. Londono.)

or two occasions the day before and I had not been at the bank.

Q. Did he say why he called you?

A. Not in particular.

Q. What was the next conversation? What took place?

A. At the bank Mr. Schroeder taken me downstairs.

Q. You didn't sign any documents while you were in Mr. Schroeder's—

The Court: He hasn't finished. He said what took place, and that Mr. Schroeder took him downstairs. [709]

Mr. Diether: Before he went downstairs, I am inquiring: Did you sign any documents in Mr. Schroeder's office?

The Witness: I don't know if before go downstairs or after I signed the documents to the bank. I remember he took me downstairs, asked me to sign the promissory note, asking me for the check that he wrote, my own check, I signed a check for 54,000 and more dollars. He dictated downstairs—

Q. (By Mr. Diether): What was that last?

The Court: He dictated downstairs—

The Witness (Continuing, through interpreter): a letter which I did not hear dictated. (In English): After I signed the promissory note, and after I gave the check to Mr. Schroeder, we went on the second floor of the bank, on the floor where is located the foreign department, and I sign—



(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Signed what?

A. I signed a letter to the bank——(through interpreter) which I have identified here.

Q. Are you referring to Plaintiff's Exhibit 11?

The Court: How many times are we going to have that identified?

Q. (By Mr. Diether): That is the document you are referring to? A. Yes.

Q. Didn't you give that information that is contained [710] in that letter to Mr. Schroeder before he dictated the letter?

A. (Through interpreter): This letter was the result of what I talked to Mr. Schroeder, and, of course, represents facts that were admitted by me previously.

Q. You told him what to put in that letter?

The Court: I think he has answered the question, counsel, in his way.

Q. (By Mr. Diether): All right. What did you mean by saying in that letter that Mr. Mattoon was to pick out the best 2,000 tons of the 2,300 tons?

Mr. Bunn: We seem to be insistent, all of us, on creating a Mr. Mattoon. You mean Mr. Sweeney?

Mr. Diether: Isn't the letter addressed to Mattoon——Mattoon & Company?

The Witness: Yes. (Through interpreter): Because the best is the best.

Q. (By Mr. Diether): Did you think you had the right to pick over the 2,300 tons and pick out the best of it? A. Yes.

Q. And who gave you that right?

(Testimony of J. B. Londono.)

A. Mr. Grinstein gave me the right to take it the first time 2,000 tons, and, obviously, I will take the best of the 2,000, obviously.

Q. That is why you had "best" put in there?

A. That—maybe that word is what was used by Mr. Schroeder personally. [711]

Q. In this letter you direct that one shipment be made of 1,500 tons and another shipment of 500 tons. You do not specify in that letter that any portion of that is to be galvanized.

The Court: Do you have a question pending?

Q. (By Mr. Diether): Which one of those shipments was to go to Mr. Echavarria?

A. (Through interpreter): I didn't give the order to separate the galvanized from the black here because Mr. Echavarria would have the right to separate it in Colombia. The order to separate the wire here was because some was in bad condition and other in good condition, but not because of the fact that one was galvanized and the other black.

Q. Which was Mr. Echavarria to take his wire from, both shipments or from one shipment?

Mr. Bunn: I object to the question. It calls for a conclusion of the witness. It does not elicit a fact here.

Mr. Diether: He is claiming that he delivered to the bank an invoice for 1,000 tons of galvanized wire and he has handed to the bank the same day instructions——

Mr. Bunn: To ship all the wire.

(Testimony of J. B. Londono.)

Mr. Diether: —to ship one shipment of 1,500 and one of 500, and I am asking him if Mr. Echavarria is to select his 1,000 from both shipments or from one shipment. [712]

Mr. Bunn: You are asking Mr. Londono what Mr. Londono's intention was or what Mr. Echavarria's intention was?

Mr. Diether: He is shipping the wire.

The Court: What is your question? Are you asking this witness what Mr. Echavarria had in his mind or what Mr. Londono had in his mind?

Mr. Diether: Which one of those shipments was intended for Mr. Echavarria under your invoice which you delivered to the bank?

The Witness (Through Interpreter): My plans, my intention, was that Mr. Echavarria would take 1,000 tons of galvanized wire of all the wire I had shipped down there, and at the same time I was offering Mr. Echavarria the complete lot.

Q. (By Mr. Diether): Of 2,000 tons?

A. Yes.

Q. Did you sign that letter up in Mr. Schroeder's office or down when you were in the note department?

A. (Through Interpreter): I can't specify which place, but it was in the bank on that date.

Q. Did you see the letter which the bank wrote on that very date to Mr. Mattoon, or Mattoon & Company, directing them to ship the wire to South America as you had directed in that letter to the bank?

(Testimony of J. B. Londono.)

Mr. Bunn: I object. What letter are you talking about? [713]

The Court: I think you had better identify it by writing if it was a letter. [714]

\* \* \*

This will be marked for identification as C-E.

(The document referred to was marked Defendants' Exhibit No. C-E for identification.)

The Court: And it purports to be a letter?

Mr. Diether: A letter from the bank to Mattoon & Company.

The Court: Dated? [715]

Mr. Diether: July 31. It is, your Honor, a photostatic copy of a letter, the original of which I think is in Mattoon's papers.

\* \* \*

The Court: Do you want to use the original?

Mr. Diether: Has he got it?

Mr. Laven: Yes.

(The document referred to was passed to counsel.)

The Witness: (Examining document.) [716]

\* \* \*

The Court: The one that is marked for identification is C-E, and the one the witness now has in his hands, that is what you are interrogating him about?

Mr. Diether: I am asking him about the original which he now has in his hand.



(Testimony of J. B. Londono.)

The Court: What are you asking him?

Mr. Diether: If he saw that letter on July 31st.

The Court: Before it was sent or after?

Mr. Diether: It was handed, as I understand it, to Mr. Sweeney in the bank at the time that Mr. Londono and Mr. Sweeney were there.

Mr. Bunn: There is no evidence to that effect yet about this letter.

Mr. Diether: I am merely asking if he saw it on July [717] 31st.

The Witness: My recollection now is that I saw the letter in the bank and this letter made me a confusion with the other letter you asked me before, and I would like to see the other letter.

The Court: Exhibit No. 11?

The Witness: Yes, your Honor, please.

(The document referred to was passed to counsel.)

The Court: And C-D, the one of July 29?

The Witness: Yes, your Honor.

The Court: Show them both to him.

Q. (By Mr. Diether): I have handed the witness Defendants' Exhibit C-D and Plaintiff's Exhibit 11.

A. (Examining documents.)

Mr. Bunn: Does the witness also have now the one with Mattoon & Company's pen receipt on the bottom of it that he was asked about a while ago?

Mr. Diether: That is the photostat.

The Court: You do not have the original?

(Testimony of J. B. Londono.)

Mr. Diether: Apparently I can't find it in my file. I do have it and I will produce it.

The Court: Very well. In other words, at this moment the witness now has before him Plaintiff's Exhibit 11, Defendants' Exhibits C-D and [718] C-E.

Mr. Bunn: May it please the court, may the witness also have the photostatic copy that he has been asked about that shows the receipt on the bottom?

The Court: That will be C-E1.

Mr. Hubert Morrow: For identification?

The Court: For identification only.

(The document referred to was marked Defendants' Exhibit No. C-E1 for identification.)

The Witness: My recollection now, your Honor, is that I saw in the bank one or maybe the two letters the one point called to my attention was Mr. Sweeney's question about if I will accept to pay the insurance.

The Court: If you will agree to pay the insurance?

The Witness: Yes. These two letters are very similar. I can't recall by sure which one I saw at the bank on the 31st. After reading I conclude that the letter marked C-E is nearer to my letter to the bank dated July 31.

The Court: Exhibit 11?

The Witness: Exhibit 11. [719]

The Court: Now, what you mean to say is that you are not clear now that the testimony you gave

(Testimony of J. B. Londono.)

a while ago is true, that you saw the exhibit C-D?

The Witness: Yes, your Honor.

The Court: The letter of July 29th?

The Witness: Yes, your Honor. You are right.

The Court: That is, you do not now remember.

The Witness: It may be confusing, your Honor.

I can't say which one of these letters I saw.

Q. (By Mr. Diether): Did you see both of them?

A. On that particular occasion I can't say if I saw both. I saw one letter, and the one point it was the question about the insurance, a very similar to that, and, your Honor, I really can't say which one I saw.

\* \* \*

Q. (By Mr. Diether): Which one are you sure that you received that you saw? [720]

\* \* \*

The Witness: I don't know. One of these letters Mr. Sweeney called my attention, some one point of one of these letters about the insurance.

\* \* \*

The Court: I understood you to say that you are not sure whether you saw both of the letters?

The Witness: Yes, your Honor.

The Court: Your recollection is that you did see at least one or the other?

The Witness: Yes, your Honor.

The Court: The question that Mr. Diether asked

(Testimony of J. B. Londono.)

you related to whether or not you had received these letters.

The Witness: No one.

Q. (By Mr. Diether): Did you see either of these letters [721] while you were in the bank on July the 31st (interpreted)?

\* \* \*

The Witness: May I put it this way, your Honor. Mr. Sweeney in presence of one of these letters, or very similar letter, maybe there is a third letter or fourth letter, but similar letter writing to the bank by Mattoon & Company, asked me if I will pay the insurance for the barbed wire at the [722] dock.

\* \* \*

The Court: I understand the long and short of the witness' answer is that he saw a letter, shown to him by Mr. Sweeney, which had something in it about insurance, and that was called to his particular attention. Whether it was one or two of those letters he doesn't remember.

The Witness: I remember Mr. Sweeney in the bank—(through interpreter) on the counter—(in English) of the foreign department—(through interpreter) signed a receipt of a letter which could be one of these two letters.

Q. (By Mr. Diether): You don't know which one it is?

A. Now, I can't say that it was this one, because the signature is——

Q. And you are referring to C-E1?



(Testimony of J. B. Londono.)

The Court: Have you got the carbon of the other letter with the receipt on it? Obviously, the witness is confused, counsel. I mean our effort is to unconfuse him; not to confuse him any [723] more.

\* \* \*

The Court: Give him the photostat of one so that we can move along. Put the copies and originals in front of him. What you want to know is if he can tell which letter he saw; is that it?

Mr. Diether: That is correct. [725]

\* \* \*

The Court: All right. Now, the witness has in front of him C-D and Plaintiff's Exhibit 10, for identification, and C-E and Plaintiff's Exhibit 16, for identification. Is that correct?

Mr. Diether: That is correct.

The Court: All right. Now, your question is: With those four documents in front of him whether or not he can tell which letter he saw on July 31st. Is that it?

Mr. Diether: That is right.

The Court: Do you understand the question, Mr. Londono?

The Witness: Yes, your Honor.

The Court: All right.

The Witness: All I can say now is the same answer, referring to the originals, with the exception now in front the carbon copy that one has Mr. Sweeney's signature, with Mattoon & Company, Inc., rubber stamp, and the other one hasn't.

(Testimony of J. B. Londono.)

The Court: Well, are you still unable to say which one of those, if either of them, that you saw on July 31st?

The Witness (Through interpreter): I cannot say whether I seen one or two or a third one. All I can say is that I have seen a letter that contained a paragraph dealing with insurance, which I can identify.

The Court: All right. Let's get on to another subject. He has given us that answer now for 15 minutes. [726]

\* \* \*

Q. (By Mr. Diether): Calling your attention to the letter from the bank to Mattoon & Company, dated July the 29th, do you remember when you saw that letter the first time, if you don't remember seeing it in the bank on July the 31st?

\* \* \*

The Court: So his question is: When did you first see it? [727]

The Witness: As a fact, I saw the letter ten minutes ago here in the court.

The Court: And if I understand your testimony, you do not recall whether you have ever seen it before?

The Witness: Not for sure. May I say, your Honor, that Mr. Sweeney used one of these letters, or other similar letter, in order to obtain from me the approval of the payment of the insurance. [728]

\* \* \*

(Testimony of J. B. Londono.)

Q. Did you have any discussion with Mr. Schroeder at the time you and Mr. Sweeney went to the bank about the endorsement?

Mr. Hubert Morrow: What date?

Mr. Diether: On July 31st—

Q. —on the document which Mr. Sweeney handed you that morning and which was identified here as the freight bill.

The Court: Exhibit No.? [729]

Mr. Diether: 7

The Court: Your question was, did you have any discussion with Mr. Sweeney?

Mr. Diether: With Mr. Schroeder about securing that endorsement on July 31st.

Mr. Bunn: Mr. Londono, he is not referring to your deposition now; he has passed on.

The Witness: Oh. There is nothing about that?

Mr. Diether: For the moment I can't find the reference.

The Court: Read the last question.

(The question referred to was read by the reporter as follows:

“Q. Did you have any discussion with Mr. Schroeder at the time you and Mr. Sweeney went to the bank on July 31st about the endorsement on the document which Mr. Sweeney handed you that morning and which was identified here as the freight bill, Exhibit No. 7, about securing that endorsement?”)

The Witness (Through interpreter): I didn't

(Testimony of J. B. Londono.)

say that Mr. Sweeney gave me that document on that morning. That could be changed that I received it on that day.

The Court: What he means is, did you discuss it with Mr. Schroeder about getting the endorsement on the back of it.

The Witness: Yes, but he asked me.

The Court: If you did it in the morning. [730]

The Witness: Yes.

The Court: What is the difference, morning or afternoon?

The Witness: In the discussion Mr. Schroeder asked to have the endorsement from Dulien.

Q. (By Mr. Diether): Was Mr. Sweeney with you then? A. Yes.

Q. Did you have the documents in front of you?

Mr. Bunn: The documents?

Q. (By Mr. Diether): This document in front of you?

A. At this particular second it was in Mr. Schroeder's hands.

Q. In Mr. Schroeder's hands? A. Yes.

Q. And that took place while you were at the bank with Mr. Sweeney on July 31st? A. Yes.

Q. Now, look in your deposition at page 236, line 22, beginning there and going over to line 5, page 237.

The Court: Exhibit D in your complaint there refers to the endorsement on the freight bill?

Mr. Diether: Right, your Honor.



(Testimony of J. B. Londono.)

The Witness (Examining deposition): Yes?

Q. (By Mr. Diether): Did you read that?

A. Line 22?

Q. Line 22, over to line 5, page 237.

A. (Examining deposition): Yes?

Q. Did you testify at the time your deposition was taken as follows:

“Q. Did you talk to any official at the bank about securing that endorsement on Exhibit D to your complaint at any time before you went down to Dulien’s office and Mr. Stanley signed the endorsement on the back of that exhibit?

“A. I don’t remember. I don’t think so.

“Q. Did you ever talk to any official of the bank at any time about securing that endorsement on the back of Exhibit D to your complaint?

“A. I have already answered that question.”

The Witness: Yes.

The Court: Go ahead.

Q. (By Mr. Diether): “Mr. Bunn: Answer it again, if Mr. Diether didn’t get it.

“The Witness: I don’t remember, and I don’t think that I inquired or discussed this matter with anyone at the bank.” [732]

Did you so testify at that time? A. Yes.

Q. You so testified? A. Yes.

Q. And which is the truth, that you didn’t talk to any official of the bank or that you did?

A. Not myself. The only thing, it was that Mr.

(Testimony of J. B. Londono.)

Schroeder asked me to have the endorsement. We had no discussion, we don't talk about, I don't say nothing about it. I don't require the endorsement. I don't require the endorsement in the bank. Mr. Schroeder with his words required the endorsement. It is very clear.

The Court: Counsel, I would like to make an observation in connection with the testimony of the witness. I do not know whether you are familiar with it, but in San Diego there are thousands of Spanish-speaking people put on trial, and I have discovered many, many times that they answer truthfully, "Did you have a conversation with somebody," and they will say, "No," "Did you have a discussion with somebody" and they will say, "No," and a few minutes later they will say, "Did you ask Mr. So-and-So on such-and-such a day so-and-so," and they will say, "Yes," but their idea of a conversation and a discussion is, as one of them said, that is like talking to your girl on a park bench, you are not talking about business. So I just wanted to make that observation. [733] It is the result of my experience. I take it into consideration whenever I hear any Latin-speaking witness. As he said, he did not have a discussion with Mr. Schroeder, but Mr. Schroeder asked him to do something.

Also I might say that there was a case in that respect where Mr. Justice Frankfurter, in a trial in the East, when asked if he had a conversation with somebody said, "No, the other man had a conversation with me."

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): On July 31, did you receive the original of that letter from the bank, which is marked Plaintiff's Exhibit 8? It purports to be a letter from the bank to Mr. Londono, [734] dated July 29, 1946?

A. (Through interpreter): Yes, I received it, and I already testified——

Q. You have already testified about both of them, haven't you?

A. About I received this letter.

The Court: Both of what?

Mr. Diether: Both Exhibit 8 for identification and Exhibit 8-A for identification, 8-A being merely the carbon copy on which you have acknowledged receipt.

The Witness (Through interpreter): I have testified that I received the original of this letter that I signed.

Q. (By Mr. Diether): And that this signature on Exhibit 8-A for identification is your signature?

A. Yes, it is.

Mr. Bunn: Before we proceed, may I ask the reporter to read the first question in that last series that Mr. Diether asked when he first directed his attention to that letter?

(The question referred to was read by the reporter as follows:

("Q. On July 31st did you receive the original of that letter from the bank, which is marked Plaintiff's Exhibit 8?")

(Testimony of J. B. Londono.)

Mr. Bunn: That is all. Thank you. [735]

Mr. Diether: May Plaintiff's Exhibit 8 and 8-A be marked? We offer it as Defendant Bank's Exhibits next in order.

The Court: 8 and 8-A will be—which is the carbon and which is the photostat?

The Clerk: No. 8 is the photostat, 8-A is the carbon.

The Court: 8-A will be C-F and 8 will be C-F1.

Mr. Laven: Your Honor, may I inquire, was C-1 withdrawn altogether?

The Court: There is no C-1.

The Clerk: C-E1.

The Court: C-E1 was withdrawn.

You did not offer Plaintiff's Exhibit 10 for identification, although it is the bank's carbon of C-D, nor 16 for identification, although it is the bank's carbon of C-E.

Mr. Diether: We will offer both of those at this time.

The Court: Plaintiff's Exhibit 10 for identification will be C-D1 in evidence and Plaintiff's Exhibit 16 for identification will be C-E1 in evidence.

Mr. Bunn: If your Honor please, I wonder, in view of the witness' testimony as to the uncertainty of the identity of Plaintiff's Exhibit 10, if it is not proper——

The Court: He was uncertain concerning the identification of both C-D and C-E.

Mr. Bunn: As to the uncertainty——[736]

The Court: Of all four documents.



(Testimony of J. B. Londono.)

Mr. Bunn: All right. In view of that uncertainty of the identity of those documents, I don't see a sufficient foundation has been laid for the introduction of those documents yet in evidence, until somebody has identified those particular documents. He hasn't. He has given uncertainty, he has given testimony of an uncertainty in his own mind about the identity of it. I object to them at this time on the ground that there is no foundation laid for them. I think they can lay a foundation, but I don't think they can lay it by this man.

The Court: I think perhaps you are correct. Then the series C-D, C-D1, C-E and C-E1 will remain marked for identification only. C-F and C-F1, however, are in evidence. Those were the letters addressed to Mr. Londono and received by him. What date is there on those, Mr. Clerk?

The Clerk: They are 8 and 8-A.

Mr. Laven: July 31st.

(The documents referred to were marked Defendants' Exhibits Nos. C-F and C-F1 and received in evidence.) [737]

Mr. Diether: I think that I can clear that up in the morning when I have a chance to review my notes a little further.

Mr. Hubert Morrow: That is July 29th?

The Court: Yes, July 29th.

Q. (By Mr. Diether): Have you told us now all that you did in the bank on July the 31st?

A. Please?

(Testimony of J. B. Londono.)

(The question was read.)

A. (Through interpreter): What I have recalled, in accordance with the questions asked.

Q. After Mr. Schroeder asked you to have the freight bill endorsed, and I am merely quoting your language, who took the freight bill then?

A. Mr. Sweeney or I.

Q. You don't know which one?

A. I can't say which one.

Q. Did you look at it at any time from that time until you had been down to Dulien's office?

A. No, I can't say that.

Q. You don't know if you did or not.

A. No.

The Court: Are you getting tired?

The Witness: Oh, I am all right, your Honor.

The Court: I hoped you would say "Yes." [738]

Mr. Diether: If he isn't, I am, I can tell you that.

The Witness: May I say now, Mr. Diether, that at that time, after we left the bank with Mr. Sweeney, we went on Dulien's place in Mr. Rendon's car, driven by him.

Q. (By Mr. Diether): Whose office did you go into when you went to Dulien's office—Dulien's place of business?

The Court: Counsel, that was covered on direct. Of course, you have a right to have him repeat the story, but Mr. Dasteel went into that, he went into all that story, and if you have some point in your

(Testimony of J. B. Londono.)

cross-examination, why not get to it and skip all this pure repetition.

Q. (By Mr. Diether): Was there any discussion about this document before Mr. Stanley put the endorsement on the back? A. No.

Q. And after Mr. Stanley put the endorsement on the back, you took the document?

A. Yes. I had the document in my possession. I don't know if in my pocket, or in my file in Mattoon office, because I had desk in Mattoon——

Q, But you took the document?

The Court: Wait a minute. He hasn't finished. You had a desk——

The Witness: I had a desk in Mattoon I used to write letters and make invoices, and I had a folder in Mattoon office. [739]

Q. (By Mr. Diether): And you had possession of it from the time Mr. Stanley put the endorsement on until the time you gave it to Mr. Bunn, I think on the 24th of August?

A. (Through interpreter): Probably, yes.

Q. Did you have any discussion with anybody about it prior to the time you talked to Mr. Koppel on August the 23rd?

A. No, I had no discussion. [740]

\* \* \*

Cross-Examination

April 27, 1950; 10:00 A.M.

(Continued)

\* \* \*

(Testimony of J. B. Londono.)

By Mr. Diether:

Q. Mr. Londono, did you bring in the amended invoice to Mr. Echavarria? A. Yes.

Mr. Bunn: You had it in my office this morning. [745]

The Witness: Yes.

Mr. Bunn: It is a blue paper, isn't it?

The Witness: Yes—here it is.

(The document referred to was passed to counsel.)

Mr. Diether: The witness has handed me a document which is written in Spanish. May I deliver it to the clerk to be marked for identification and then we will hand it to the interpreter to read in English?

The Court: It will be your next number in order. That is C-G.

(The document referred to was marked Defendants' Exhibit C-G for identification.)

Mr. Bunn: May I suggest, Mr. Diether, that the language of all of that but the note at the bottom be compared by the interpreter silently with the one that was testified from before and it will save reading into the record a translation that has already been fully read into the record.

Mr. Diether: No. I would like to have the entire document read into the record.



(Testimony of J. B. Londono.)

The Interpreter: The letterhead is: J. B. Londono, Medellin, Colombia. Telegrams and cables: "Jotabe." P. O. Box 979.

Los Angeles, California, July 27—it is written July 24, crossed out, and then written 27 on top—1946.

It is to Mr. Alberto Echavarria, Medellin (Colombia). [746]

On account with J. B. Londono, Los Angeles, Cal., debit.

One thousand (1000) tons barbed wire galvanized, new, double twist, at U. S. \$160 per ton cif Colombian port.

The extension is U. S. \$160,000. Then written in letters, one hundred sixty thousand dollars.

Double space. Credit No. 3578 of Citizens National Bank, Los Angeles.

Next line: Ditto marks, No. 4036 of Banco Comercial Antioqueno, Medellin (Col.) abbreviation for Colombia.

Then after double space, J. B. Londono.

Then note: This invoice should be considered provisional and has been formulated only to collect the credit. With each shipment a detailed invoice will be sent. Has been used under date of July 27.

The Court: Very well.

Mr. Diether: Is that all of it?

The Interpreter: Then there is a word "copy" on the end.

The Court: This is for identification?

Mr. Diether: Yes, for identification. [747]

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Did you make any amended invoice to Mr. Echavarria other than the one that the interpreter has just read (interpreted)?

A. (Through interpreter): With each shipment sent to Colombia an individual invoice was made.

Q. Do you have the copies of those invoices?

A. No.

Q. You didn't retain a copy?

A. No. The invoices I made here, I haven't copy.

Mr. Diether: I didn't hear the answer.

(The answer was read by the reporter.)

Q. (By Mr. Diether): You have no copies of any other invoices you sent to Mr. Echavarria?

A. Made here?

Q. Yes.            A. No.

Q. Or in Colombia? Did you make any in Colombia?            A. Yes, we made in Colombia.

Q. Have you got copies of those?

A. I suppose I have.

Q. Do you have them with you?

A. Not with me.

Q. Are they in the United States?

A. I have a lot of papers in my suitcase.

Q. Will you see if you can find any? [748]

A. Yes.

Q. And bring those to court, please?

A. Yes, Mr. Diether.

Q. Yesterday you stated that you did not know whether you had seen the letter of July 29th from

(Testimony of J. B. Londono.)

the bank to Mattoon & Company. That is Defendant Bank's Exhibit C-D. Since last night have you had any time to think about that matter?

I am handing the witness Defendants' Exhibits C-D and C-D1.

A. (Through interpreter): I don't remember anything that could change the testimony of yesterday.

\* \* \*

Do I understand your testimony to be that you did not see the original of that letter, which is Exhibit C-D, or a copy, which is Defendants' Exhibit C-D1, at any time prior to your coming into the court room yesterday?

Mr. Hubert Morrow: It seems to me we covered that upside down yesterday. I object on the ground it is repetition.

The Court: Yes. The objection is sustained.

Mr. Diether: If your Honor please, if your Honor will recall, I could not find some references I had yesterday, and I would like to——

The Court: Well, you found the other document and [749] submitted it to him. We spent 30 minutes on that one question yesterday, and the net result was that the witness could not remember.

\* \* \*

The Court: That is not his testimony and assumes a fact not in evidence. It is objectionable upon that ground.

\* \* \*

(Testimony of J. B. Londono.)

Mr. Diether: I haven't had a chance to read the transcript of yesterday, so I am not in a position to say exactly what the witness' testimony was, only from my memory. But if your Honor will not permit me to examine him any further, [750] I wish to call this witness' attention to a portion of his testimony which was taken at the time of the deposition, page 126, beginning on line 9, and going to page 127, line 22.

(Witness examines deposition.)

The Court: Now, is that Exhibit F that you are talking about, that same letter?

Mr. Diether: That is the same letter. That Defendants' Exhibit C-D is Defendants' Exhibit F.

(Handing document to witness.)

Q. (By Mr. Diether): Have you read it?

A. Yes.

Q. Did you testify at the time of the taking of your deposition, as follows, and this is beginning at page 126, line 9:

“Q. I show you a letter here marked Defendants' Exhibit F, on the stationery of the Citizens National Bank, under date of July 29th, addressed to Mattoon & Company, and signed by Glenn Powers, then at the bottom there is an acknowledgment of the receipt of it by Mattoon & Company, signed by Mr. Sweeney. I will ask you if you ever saw a copy



(Testimony of J. B. Londono.)

of that letter or knew of its contents or knew that it had been written or received.

“Mr. Bunn: Before he answers, you mean a copy [751] of the letter or the original?”

“Mr. Dasteel: Either one. I am asking him if he knows anything about it.

“The Witness: I saw one original or one copy, or both.

“Mr. Dasteel: Where did you see it, Mr. Londono?

“A. At the Mattoon offices.

“Q. On what date? In order to help refresh your memory, was it on a Saturday?

“A. Saturday.”

The Court: No. “A. Saturday—question mark.”

Mr. Diether: Question mark.

“Q. July 29th, Saturday.

“Mr. Bunn: Mr. Dasteel, pardon me, but Saturday was not July 29th.

“Mr. Dasteel: You are right.

“Q. Was it on Monday, July 29th?

“A. No, because I was not at the Mattoon office on July 29th.

“Q. What day were you there?

“A. The first week of August.

“Q. The first week of August?

“A. The first week of August.

“Q. Was it the early part of the week [752] or the latter part of the week?

“A. I don't recall.

(Testimony of J. B. Londono.)

“Mr. Bunn: That question is not as helpful as you think it is, because the 1st day of August was on Thursday. Please clarify your question.

“Mr. Dasteel: When you say the first week of August do you mean the first few days of August?

“A. I will say the end of July or beginning of August.”

Did you so testify?           A. Yes.

Q. And does that state the truth in regard to when you first saw that exhibit?

A. (Through interpreter): There isn't anything in my mind to deny this testimony. It was that way when I gave it, when I testified. And that is the essence of what he said. [753]

\* \* \*

Q. (By Mr. Diether): After you left Dulien's office on July 31, I believe you stated that you went to the dock, Pier A, in Long Beach.

A. It is my recollection that I stopped on that place on my way to Wilmington.

Q. What quantity of wire was on the dock at that time?           A. A big quantity. [754]

Q. What is that?           A. A big quantity.

Q. Did you examine it?

A. Yes. I looked at the wire and I wanted to see what kind of wire it was moved from Long Beach to Moore-McCormack Line in order to know what wire was going to be shipped to Colombia.

(Testimony of J. B. Londono.)

Q. Was there any chalk marks on the dock at that time?

A. I don't recall exactly what day, about the 31st of July, I saw chalk marks on the dock. But I remember one of those days, about the 31st, I saw the marks "Gonzalez & Blanco" on the right and "Dulien Steel Products" on the left. But I don't know the day exactly.

Q. Were they taking any wire from the dock at that time for you?

Mr. Bunn: I object to that as calling for a conclusion, and it is a question which this witness could not positively answer.

Mr. Diether: If he knows.

The Court: Were they taking any wire from the dock?

Mr. Diether: For Mr. Londono.

The Court: For whom?

Mr. Diether: Mr. Londono.

The Court: Who is "they"? [755]

Q. (By Mr. Diether): Were any of your agents taking wire from the dock for you?

A. On that particular day?

Q. Yes.

Mr. Bunn: Same objection. When he puts the "for you" in there it calls for a conclusion from this witness.

The Court: If he knows he can answer. Do you know?

The Witness: I saw people moving wire from

(Testimony of J. B. Londono.)

the piles but I can't say in particular if it was for me or for Gonzalez.

Q. (By Mr. Diether): Mr. Sweeney was with you, wasn't he?

A. Yes, and maybe he can say.

Q. Did he tell you whether they were taking any wire for you?

Mr. Bunn: I object to that as incompetent, irrelevant and immaterial, what Mr. Sweeney told him then.

The Court: Overruled.

The Witness: I think that at that time the lot assigned to Cartagena, 112 tons or 120 tons, was already moved.

The Court: It was already moved.

The Witness: Moved. I don't remember if at that particular time, at the moment, some wire it was moved from—[756]

The Court: He wants to know whether or not Sweeney told you they were taking any wire for you.

The Witness: Not that I remember.

Q. (By Mr. Diether): Then you went over to the Moore-McCormack dock? A. Yes.

Q. And you saw some wire there? A. Yes.

Q. How do you know it was yours?

Mr. Bunn: He hasn't so testified—yes, he has. Excuse me.

The Witness: Because Mr. Sweeney, I asked Mr. Sweeney to take me at the place when the wire it was moved for my account, and obviously I saw the



(Testimony of J. B. Londono.)

wire in the dock, Moore-McCormack dock, for account of J. B. Londono to ship to Cartagena and I conclude it was my wire.

Q. (Mr. Diether): That was on the evening of July 31st?      A. I suppose so.

Q. You are sure of it, aren't you?

A. Probably, yes.

Q. Was that wire subsequently moved from the Moore-McCormack dock back to Pier A?

A. At the first time when I saw the wire——

The Court: Do you know whether it was [757] moved——

The Witness: I beg your pardon.

The Court: Do you know whether it was moved back to Pier A or not?

The Witness: I don't know.

The Court: If you don't know, you can say so.

The Witness: Your Honor, I will add that I ordered Mr. Sweeney, don't ship that wire.

Q. (By Mr. Diether): You directed him then to do what?

A. The first time I told Mr. Sweeney, don't ship that wire to Colombia, but on the way back I asked him, or he told me about the possibility of segregating the wire in Moore-McCormack dock, and I said then, "All right, separate the less bad wire and ship the best to Colombia."

Q. Was any separation made of that wire on the Moore-McCormack dock?      A. Yes, it was.

Q. You separated out the rusty from the good wire, is that your contention?

(Testimony of J. B. Londono.)

A. Yes. I ordered to ship the less bad wire and then they shipped 112 tons net and left about 30 tons in the dock.

Q. Did you see them separating the wire at the Moore-McCormack dock at any time after July 31?

A. No, not that I remember.

Q. You stated that you had a bill for that segregation [758] on the Moore-McCormack dock for that 112 tons?

A. Yes.

Q. Will you bring that in to court, please?

The Court: I think it is already here.

Mr. Bunn: I think it is already here, and that Mr. Sweeney will be able to testify about it.

Mr. Diether: I haven't been able to locate it. I would like to see it.

Mr. Bunn: I haven't looked through Mattoon's papers that are here.

The Court: There was one such bill listed in your list of exhibits.

Mr. Bunn: Yes, sir.

Mr. Diether: That is for the West Wind. That is the boat which sailed some time later.

The Court: Very well.

Q. (By Mr. Diether): Was all the wire which was shipped on the Mormacreed taken from the Long Beach dock on July 31st?

The Court: If you know.

The Witness (Through interpreter): To my knowledge, yes.

Q. (By Mr. Diether): Do you know when the Mormacreed sailed from Los Angeles?

(Testimony of J. B. Londono.)

A. The bill of lading showed——[759]

Q. Just answer. Do you know what day it sailed?

A. (Through interpreter): I didn't see the boat leave but a document said it was the 20th, August 20th.

Mr. Diether: May I see Plaintiff's Exhibit 15?

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 15 and ask you if you saw the original of that letter or the copy on or about the date it was dated.

The Court: That is the letter of M & M Transfer?

Mr. Diether: To M & M Transfer; yes.

The Witness (Examining document): No.

The Court: The question is whether or not he saw the letter on or about the date it bears?

Mr. Diether: That is right.

The Court: Or whether or not he has ever seen the letter?

Q. (By Mr. Diether): Have you ever seen the letter? A. No, I don't remember.

Q. Did Mr. Sweeney ever tell you about that letter? A. No.

Q. Did you give Mr. Sweeney the instructions which are contained in that letter?

A. I told Mr. Sweeney, don't ship the wire, that wire, [760] to Colombia.

(Testimony of J. B. Londono.)

Q. That is all you told him?

A. But later on, on my next conversation or the same conversation, I say, "Select the wire, separate the wire, and ship the less bad wire to Colombia."

Mr. Bunn: I think that is about six times that he has been required to testify to that same incident.

Q. (By Mr. Diether): Isn't it true, Mr. Londono, that you didn't give any instructions to Mr. Sweeney to separate the wire until after the 112 $\frac{3}{4}$  tons were shipped on the Mormacreed?

The Witness: Will you repeat that?

(The question referred to was read by the reporter as follows:

("Q. Isn't it true, Mr. Londono, that you didn't give any instructions to Mr. Sweeney to separate the wire until after the 112 $\frac{3}{4}$  tons were shipped on the Mormacreed?")

The Court: You mean until after August 20?

Mr. Diether: That is not the date I believe that the boat sailed.

The Court: That is the date that he said he heard the boat left.

The Interpreter: Shall I proceed?

The Court: I do not know what counsel means, "until after [761] it was shipped." I do not know what he means by "shipped."

Mr. Diether: The day the boat left, whatever day it was.

The Interpreter: Shall I interpret?



(Testimony of J. B. Londono.)

The Court: Yes.

The Witness: I don't understand the question.

The Court: I think the question is still indefinite.

The witness says he doesn't know the date the boat left. He heard that it left on the 20th. In your question you said you wanted to know whatever date it left.

Mr. Diether: Let me reframe it.

Q. After the first 112 $\frac{3}{4}$  tons of wire were taken from the dock at Pier A—— A. Yes.

Q. ——didn't you then at that time first give Mr. Sweeney instructions to separate the wire?

The Court: That is what he testified to a dozen times already.

Mr. Bunn: He has already testified to that.

The Court: That it was after that it was moved to the Moore-McCormack dock.

Q. (By Mr. Diether): Did you go back to Mr. Sweeney's office in the evening of July 31st when you were at the dock, the Moore-McCormack [762] dock?

A. I don't remember if I went to his office or I left him at the door of the building. [763]

Q. You went to his office the next day, didn't you? A. The next day.

Q. Which was August the 1st? A. Yes.

Q. And you wrote the letter then to Mr. Dulien?

A. Yes.

Q. Mr. Sweeney helped you dictate that letter?

A. Probably, yes.

Mr. Bunn: Well, do you know?

(Testimony of J. B. Londono.)

The Witness: I don't remember if Mr. Sweeney. I remember his secretary.

Q. (By Mr. Diether): Wasn't Mr. Sweeney right there with you?

A. I think he was in the office, and I show him the letter after——(Through interpreter). It was written——(In English) and he approved.

Q. At that time did you have any documents before you, when you wrote that letter? A. No.

Q. Didn't you have Plaintiff's Exhibit 7 in front of you at that time, which is the freight bill?

A. No.

Q. I call your attention to your testimony at the time your deposition was taken, at page 204, line 5, to page 204, line 15. [764]

\* \* \*

The Court: He testified, and I have forgotten the precise date, that he had it, and the two of them went out, and they sat down at Dulien's, and he said they looked at it and that he does read English. So that if all you want to establish is that he saw the freight bill before he discovered it was not actually the bill of lading, the plaintiff himself proved that.

Mr. Diether: Then I think, your Honor, if your Honor is satisfied, all right. Also, I want to prove——

The Court: I am not satisfied about anything, but I am certain if that is what you want to show, it is already shown in the record because the witness so testified.

(Testimony of J. B. Londono.)

Mr. Diether: Also, I want to show that this witness testified differently at the time his deposition was taken.

The Court: Very well.

Mr. Diether: I think that goes to show the character of this man's testimony.

The Court: Very well. What page was it, again?

Mr. Diether: Page 204, line 5. [766]

The Court: This is solely an impeaching question?

Mr. Diether: That is correct.

The Court: All right.

Mr. Diether: To page 204, line 15.

Mr. Hubert Morrow: Line 5, you say?

Mr. Diether: Line 5, yes.

The Court: From line 5 to where?

Mr. Diether: To line 15.

The Court: To line 15. Well, let him finish it.  
down to line 21.

Mr. Bunn: You have read it, sir?

The Witness: Yes.

Q. (By Mr. Diether): All right. Did you testify at the time your deposition was taken as follows:

“Q. In this letter you mentioned ‘bill of lading LA 29.’ Where did you get that information?

“A. Let me see it, please. Because I had on hand a document that I presumed was the bill lading, that I now know was a bill of freight, and on which it is clearly marked ‘LA 29.’

(Testimony of J. B. Londono.)

“Q. Mr. Sweeney was present when you dictated that letter, was he not? A. Yes.

“Q. Did you receive this document, Plaintiff’s Exhibit 1, from Mr. Sweeney? [767]

“A. Yes.”

The Court: That is the freight bill?

Mr. Diether: Yes.

Q. (By Mr. Diether) (Continuing):

“Q. Didn’t he tell you that that was not a bill of lading? A. No.

“Q. Did he tell you that it was only the freight bill?

“A. He and I presumed that it was a bill of lading.”

Did you so testify?

A. Yes. And may I add that when I said I had, in the Spanish means——(Through interpreter) when I formulated that letter I referred to I had the document, which means that I have had it at some time, that is, in the past.

Mr. Bunn: He said preterit, p-r-e-t-e-r-i-t, didn’t he?

The Interpreter: Yes.

Mr. Bunn: He said that in Spanish.

The Court: What does “preterit” mean?

The Interpreter: The past time.

Mr. Bunn: A continuing past.

The Witness: And when I say I had, it means I had at one time. That’s correct, from the [768] Spanish.



(Testimony of J. B. Londono.)

Q. (By Mr. Diether): This letter that you received from Dulien on August the 7th, which is Plaintiff's Exhibit 25, for identification, that just merely confirms the agreement you had with Mr. Grinstein on August the 5th, doesn't it?

Mr. Bunn: That speaks for itself; that document does. I object to the question.

The Court: Objection sustained.

\* \* \*

Q. (By Mr. Diether): This letter was merely the confirmation of the arrangement that you had with Mr. Dulien on August 5th?

Mr. Bunn: The same objection, that it calls for a conclusion, and the document speaks for itself fully.

The Court: He wants to know and he is asking whether or not his understanding of that letter is a confirmation [769] of the conversation which occurred on August 5th.

Mr. Diether: That is right.

The Witness (Through interpreter): The conversation that was begun on August 5th and that probably continued up to the 7th, when I got the letter.

Q. (By Mr. Diether): When you went to the dock on August the 5th with Mr. Grinstein, was Mr. Sweeney with you?

A. I can't recall, Mr. Diether.

Q. Were they separating any wire on the dock at Pier A, when you were there on August 5th?

(Testimony of J. B. Londono.)

A. Yes. I saw people separating wire, taking wire from the boat to cars for Gonzalez & Blanco.

Q. I don't believe you understand. Were they separating the rusty wire from the non-rusty?

Mr. Bunn: I object to the question as uncertain. If he means taking out one kind of wire as distinguished from another, or taking one kind from over here and putting it over here, that is one thing.

Mr. Diether: The witness testified he gave instructions to Mr. Sweeney to start separating the wire.

Mr. Bunn: At Moore-McCormack.

Q. (By Mr. Diether): Was any separation being done for you on Pier A, that you know of?

A. At that particular time, I don't remember.

Q. Was any separation being done for you on August the [770] 7th?

Mr. Bunn: If you know whether it was being done for you.

The Witness: No, I don't know.

Q. (By Mr. Diether): You don't know. After you received that letter from Mr. Dulien on August the 7th, do you know whether the rusty wire which you directed Mr. Sweeney to have separated out—was that put in any one particular place or location on the dock?

The Court: Let me hear that.

(The question was read by the reporter.)

The Court: All he wants to know is whether you know the wire was separated after August 7th.

(Testimony of J. B. Londono.)

The Witness: Yes. [771]

Q. (By Mr. Diether): Was it put in any particular place, that is, the rusty wire?

A. No. (Through interpreter) The wire that was separated was placed on the dock in places where they were to be shipped to South America.

Q. Was that in Pier A?

A. (Through interpreter): The wire that was separated there, if it was separated, it was moved immediately to another pier for shipment.

Q. You mean the rusty wire, you mean the worst wire?

Mr. Bunn: He hasn't so stated.

The Witness: I didn't see it after it was in the other pier.

Q. (By Mr. Diether): In this letter which you got from Mr. Dulien on the 7th he stated, you separate out the rusty wire and we will renegotiate the price about that later, and I want to know now, did you separate out the rusty wire and did you put it in any particular place where it could be identified?

A. No, because after I received the letter from Dulien, Matson refused me the privilege of separating the wire.

Mr. John Morrow: If the court please, I move to strike the reference to Matson as not responsive. "Matson refused" is a conclusion of the [772] witness.

The Court: The motion is denied.

Mr. Diether: I wish to show the witness the

(Testimony of J. B. Londono.)

letter which is referred to in our list of exhibits which is No. 25, and our document No. 43.

The Court: As item number what?

Mr. Diether: 25.

The Court: It will be marked for identification as C-H.

(The document referred to was marked Defendants' Exhibit C-H for identification.)

Q. (By Mr. Diether): I show the witness what purports to be an original letter from Mattoon & Company to the bank dated August 20. Did you see that letter at any time?

A. I believe yes.

Q. When did you see it?

A. I think I take it personally, the letter with the documents, and Mr. Sweeney to the bank. My recollection is that it was the same day I paid the bank \$3,050.

Q. In other words, you took that to the bank on August 20, 1946?

Mr. Bunn: He said he thought so.

The Witness: Probably yes, Mr. Diether.

Q. (By Mr. Diether): And at that time you received from the bank the bill of lading for the shipment of 112- $\frac{3}{4}$  tons of wire which [773] you were shipping on the Momacreed?

A. Yes, and I gave the bank a check for \$3,050.

Mr. Diether: May that be offered as defendant bank's next exhibit?

The Court: In evidence. C-H.



(Testimony of J. B. Londono.)

(The document previously marked for identification as Defendants' Exhibit C-H was received in evidence.)

Q. (By Mr. Diether): Did you know the next quantity of wire you shipped to South America?

A. Yes.

Q. What boat did it go on?

A. It went by Moore-McCormack boat to Cartagena, about 430 tons.

Q. Do you remember what the name of the boat was? A. (Pause.)

Q. Was it the West Wind?

A. Maybe. It was a Moore-McCormack boat.

Q. Do you know when the wire was picked up from Pier A, for you, that was shipped on the West Wind? A. I think it was during August.

Q. Do you know the dates?

A. No, Mr. Diether.

Mr. Diether: I now wish to show the witness the exhibit which is Item 30 and 31 on the defendant bank's list. [774]

The Court: Do you suppose there would be any possibility about entering into a stipulation concerning the sending of these documents?

Mr. Diether: I would be glad to stipulate.

Mr. Bunn: I am perfectly happy to stipulate about these shipments to South America.

Mr. Diether: And that these documents have been duly signed? [775]

(Testimony of J. B. Londono.)

Mr. Diether: At this time, your Honor, I think the parties wish to stipulate that the document which has been marked C-J, which is a carbon copy of a letter from Mattoon & Company to the Citizens Bank, dated August 30, 1946——

The Court: Your item No. 30?

Mr. Diether: No. 30? No, No. 31. ——that the original of that letter was received by the bank on or about the date it is dated, and that on or about August the 30th, 1946, Mr. Londono received from the bank the original documents therein referred to and that he acknowledged receipt of same on the letter which is Exhibit C-J.

Mr. Bunn: I so stipulate.

The Court: All right. If there is no indication of not joining, I take it that everybody else joins in that.

Mr. Hubert Morrow: That statement is correct, your Honor. That is No.——

The Court: It is C-J, and it is item No. 31 on the bank's list.

Mr. Hubert Morrow: Yes, sir.

(The document referred to was marked Defendants' Exhibit C-J, and was received in evidence.)

Mr. Hubert Morrow: What about C-I?

Mr. Diether: C-1 will be offered next. The parties desire to stipulate that the exhibit which is marked C-I, which is a carbon copy of a letter

(Testimony of J. B. Londono.)

form Mattoon [776] & Company to the defendant bank, dated August 30th, 1946, that the original of that letter was received by the bank on or about the date it is dated, and that on or about August 30th, 1946, the bank delivered to Mr. Londono the originals of the documents therein referred to, and he acknowledged receipt of same on said date.

Mr. Bunn: I so stipulate.

The Court: Very well. The stipulation is approved.

(The document referred to was marked Defendants' Exhibit C-1, and was received in evidence.)

Mr. Diether: The parties desire to stipulate that the exhibit which is marked C-K, which is the original of the letter from Mattoon & Company to the Citizens Bank, dated October 11, 1946, was received by the bank on or about the date it is dated, and that on or about said October 11, 1946, the bank delivered to Mr. Londono the documents therein referred to, and that Mr. Londono acknowledged receipt of same on said October 11, 1946.

The Clerk: That is your No. 34?

Mr. Diether: 57.

Mr. John Morrow: Will you give us your item number on each one?

Mr. Hubert Morrow: This is No. 37?

Mr. Diether: 57.

The Court: Your item 57? [777]

Mr. Diether: Yes.

(Testimony of J. B. Londono.)

The Court: I don't have any item 57. There isn't any 57 on my list.

Mr. Diether: Oh, No. 34.

The Court: The bank's item No. 34?

Mr. Diether: Right.

The Court: All right. As to C-K, the stipulation is approved, and it is in evidence.

(The document referred to was marked Defendants' Exhibit C-K, and was received in evidence.)

Mr. Diether: The parties desire to stipulate that the defendant bank on or about October 28, 1946, wrote a letter to Mattoon & Company, the original of which is Exhibit C-L——

The Court: Item No. 36 on your list?

The Clerk: 62.

Mr. Diether: 62.

The Court: Item 36, bank's No. 62?

Mr. Diether: Yes.

Mr. Hubert Morrow: If you will give us that number each time, it will save a lot of time.

Mr. Diether: Item No. 36, bank's No. 62. That the original of that letter——

The Court: Now, is that the one you just got through talking about?

Mr. Diether: Yes, that the original of that letter—— [778]

The Court: You have got a new one?

Mr. Diether: Oh, no.



(Testimony of J. B. Londono.)

The Court: All right.

Mr. Diether: That the original of that letter was received by Mattoon & Company on or about the date it was dated.

The Court: All right: It is in evidence as C-L.

(The document referred to was marked Defendants' Exhibit C-L, and was received in evidence.)

Q. (By Mr. Diether): Mr. Londono, as I understand from your testimony, Mattoon & Company, or its agents,—Strike that.

As I understand from your testimony, Matson Navigation Company, or its agents, refused to allow you to select wire on the dock at Pier A?

A. Yes.

Q. But they did not at any time refuse to deliver wire to you?

A. No, that I remember——(through interpreter) that I know.

Q. I show you item 26 on the bank's list which purports to be a carbon copy of instructions to Matson Navigation Company, dated August 22, 1946, together with a copy of instructions to Koppel & Company.

While counsel are examining those documents, do you [779] remember giving any particular instructions to Mr. Mattoon——

Mr. Bunn: Mr. Sweeney, you mean?

Q. (By Mr. Diether): ——to Mr. Sweeney in regard to giving instructions to Koppel & Company

(Testimony of J. B. Londono.)

relative to separating the rusty wire in connection with the shipment that you made on the vessel which was named Lookout?

Mr. Bunn: I object to the question as confusing, that is, that it is not clear, it is indefinite.

The Court: It is a little.

Mr. Diether: I will withdraw it and reframe it.

Q. (By Mr. Diether): You remember you shipped 500 tons of wire on the steamship Lookout?

A. Yes.

Q. Did you give Mr. Sweeney any special instructions in connection with separating out the rusty wire that was shipped on that vessel?

A. On all shipments I gave Mr. Sweeney instructions to separate.

Q. Did you see any copy of any written instructions that he ever gave to Koppel & Brothers in connection with that shipment? A. No. [780]

The Court: That will be C-M. What are they, three sheets?

Mr. Diether: No, two sheets.

The Court: C-M1 and C-M2.

(The documents referred to were marked Defendants' Exhibits C-M1 and C-M2 for identification.)

Mr. Bunn: I haven't seen these before.

Mr. Hubert Morrow: Are they marked for identification?

The Court: Yes, they are marked for identification.

(Testimony of J. B. Londono.)

(Exhibiting documents to counsel.)

Q. (By Mr. Diether): I show you defendant bank's Exhibit C-M1 and C-M2 for identification. Did you ever see the original or a copy of either of those two documents before? A. No.

Mr. Diether: Those documents, your Honor, are from the file of Mattoon & Company which they have delivered here in court.

Q. You went to Wilmington with Mr. Sweeney to the office of Matson Navigation Company to inquire about the shipping documents on this wire, did you not?

Mr. Bunn: What date?

Mr. Diether: I don't know. He didn't specify the date.

The Witness: Yes. [781]

Q. (By Mr. Diether): Do you remember now what date it was?

A. I don't know the date. It was after August 24.

Q. Was it about a week?

A. After August 24.

Q. How long after, a few days?

A. A few days.

Q. Did you see a document there at Matson's office in connection with this shipment?

A. Yes.

The Court: That is the shipment on the Lookout.

Mr. Diether: No, the shipment——

The Witness: White Squall.

(Testimony of J. B. Londono.)

Mr. Diether: —for the White Squall. That is what he testified about.

Q. Did you have the document in your hands or—— A. It was in front of me.

Q. Did you have any other documents with you at that time?

The Court: This is the occasion when he went to Matson Company in Wilmington?

Mr. Diether: That is right.

The Witness: Yes. I had and I have had—how do you say that? (Through interpreter) I had at that moment the bill of freight. [782]

Q. With you? A. With me.

Q. Did you compare the bill of freight with the document that you saw?

A. I remember I read it. I compared the type-writing legend written on that bill of freight with the one written on the other document and I found no difference.

Mr. Bunn: Did he say typewritten?

The Interpreter: Yes, typewritten.

The Witness: From my recollection now the other document—— (through interpreter) the other document that I saw must have been a copy of the bill of lading. [783]

\* \* \*

The Court: Very well. The record will show that counsel for Matson has now handed Mr. Diether, counsel, for the bank, the original bill of lading, LA-29.

The Clerk: Do you want it marked C-N?



(Testimony of J. B. Londono.)

The Court: C-N.

(The document referred to was marked Defendants' Exhibit C-N for identification.)

Mr. Diether: It is our Item 12, your Honor, on the list.

The Court: Very well.

Q. (By Mr. Diether): I show you what purports to be the original bill of lading of Matson Navigation Company, No. LA-29. Was that the document that you saw in Matson's office in Wilmington? A. I suppose no. [784]

\* \* \*

The Court: You have handed the clerk some other documents?

Mr. Diether: I have handed the clerk another copy of a bill of lading No. 29 which was exhibited to—I don't know whether it was exhibited to this witness, but it was used at the time of the taking of the depositions. I think it was exhibited to Mr. Moran.

Mr. Laven: This was marked at the time of the taking of the deposition and it was produced from the files of the government which was turned over to it by Matson Navigation Company. It was shown at the time the deposition was taken and so marked.

Mr. Diether: As a true copy of the bill of lading.

The Court: Whatever it is, it will be marked C-O. That is a copy of a bill of lading.

(Testimony of J. B. Londono.)

(The document referred to was marked Defendants' Exhibit C-O for identification.)

\* \* \*

The Court: Are you offering a stipulation that the original of this document, and that it is a true carbon in so far as the typing goes, or what?

Mr. Laven: We will have to compare that, your Honor.

The Court: Here is the original.

(The document referred to was passed to counsel.) [785]

Mr. John Morrow: It certainly doesn't have all of the writing that the original has.

Mr. Laven: This apparently is a typed copy, an original typed copy.

The Court: It is an original. Then is it stipulated that it is not a carbon copy of the original?

Mr. Laven: Yes, and in different amounts too.

Mr. Dasteel: The photostatic copy of that would show the change. I think the court ought to see this.

Mr. Diether: Now may we also have marked at the same time——

Mr. Bunn: Wait a minute.

Mr. Diether: We will have it marked first. There is another copy of a bill of lading, LA-29, which is attached to Matson's answer and it is Exhibit B.

Now can you produce the original of that, Mr. Morrow?

The Court: You mean the one from which that photostat was made?

(Testimony of J. B. Londono.)

Mr. Diether: That is right.

Mr. John Morrow: No, I believe Mr. Laven may have had that at the time he represented Matson. I don't know where it is.

Mr. Diether: This answer is signed by your firm.

Mr. John Morrow: I don't know where the photostat came from. The answer was prepared by Mr. Aldwell in San Francisco. [786]

The Court: Do you want that one attached to Matson's answer marked C-P for identification?

Mr. Diether: Yes.

(The document referred to was marked Defendants' Exhibit C-P for identification.)

The Court: They are all marked for identification. [787]

\* \* \*

The Court: I will reframe the stipulation on C-O: that it is a purported copy of the original bill of lading, which is not a true and accurate copy, but that it was furnished by the United States Attorney who received it from Matson.

Mr. Bunn: I will stipulate that far.

Mr. Diether: So will I.

The Court: All right.

Mr. Laven: Speaking of the form only still.

The Court: Now, as to C-P.

Mr. Diether: As to C-P Matson alleges in its sixth defense the bill of lading actually issued is the form described in said complaint, and said bill of lading is annexed hereto as Exhibit B, and that is

(Testimony of J. B. Londono.)

the one that has been marked C-P. So they allege it is a true copy of the original, as I understand it. In other words, it is a carbon copy.

Well, they do not bear the same form numbers.

\* \* \*

The Court: I don't know what counsel's point in there is. The original bill of lading is here. If any one of these copies were given to anybody in the course of this litigation, and were acted upon as being a true copy of the bill of lading, that is one thing. But these copies that [791] we are talking about here now—I don't know what Moran said in his deposition, but that copy there, how could anybody be prejudiced by it?

\* \* \*

The Court: Unless the evidence shows that somebody received a copy which was not a true copy and acted upon it.

Mr. Hubert Morrow: Yes, sir.

The Court: But the evidence doesn't show that yet.

Mr. Diether: Can we have the same stipulation, then, with regard to C-P that we did with regard to C-O?

\* \* \*

The Court: It purports to be a copy, but that it is not an accurate copy.

Mr. Bunn: The trouble is these documents are not the same.

The Court: I am just saying and formulating



(Testimony of J. B. Londono.)

the stipulation: that it was attached to the answer and was referred to counsel who prepared the answer as being a true copy at the time they attached it to the answer. [792]

Mr. Diether: Very well.

Mr. Bunn: I will so stipulate.

The Court: That is Exhibit B to defendant Matson's answer.

\* \* \*

The Court: Counsel, I think in fairness to him you had better show the witness the different forms.

\* \* \*

The Court: Now, you have before you Exhibit D-A, C-N, C-O and C-P?

Mr. Diether: Right.

The Court: And your question is if he can tell from examining those documents whether or not any of them are copies [793] of the documents which he saw as a bill of lading in Wilmington on August 24th, or the document itself.

Mr. Bunn: Do you understand?

The Witness: Yes.

Mr. Hubert Morrow: May I be sure of the record? You are showing the witness Exhibit D-A?

The Court: Dulien's A.

Mr. Hubert Morrow: Is that for identification?

The Court: That is for identification, yes.

Mr. Hubert Morrow: And C-O for identification?

The Court: C-N, for identification; C-O, for identification; and C-P, for identification.

(Testimony of J. B. Londono.)

Mr. Hubert Morrow: They are all for identification?

The Court: All for identification.

Mr. Hubert Morrow: Thank you, sir.

The Witness (Through Interpreter): I remember having seen in Wilmington a document similar or exactly as that in front of me, which had in its body a typewritten description exactly as the one expressed in the bill of freight.

The Court: All right. Now, let's give him the bill of freight, then. That is Plaintiff's Exhibit No. 7.

(The document was handed to the witness.)

The Witness: In other words, my comparison, it was made——

Mr. Bunn: "Comparison"—is that the word?

The Court: You still have to talk to Mr. Morrow over [794] there (indicating), although these fellows are right at your elbow.

The Witness: My comparison, it was regarded——

Mr. Bunn: Louder.

The Witness: ——the description of the goods, and my principal point was to look for some exception in the body. (Through Interpreter): I was looking for a remark in the document regarding the condition of the merchandise, and I didn't find it.

The Court: An exception, he says.

The Interpreter: An exception.

The Witness: Remarks.

(Testimony of J. B. Londono.)

The Court: Yes.

Q. (By Mr. Diether): Can you identify any one of these as being the documents you saw in Wilmington or a copy of any of the documents you saw in Wilmington?

A. (Through Interpreter): My recollection is that the document I saw in Wilmington was type-written all in capitals.

Q. All of these documents are in capitals?

A. No.

Q. That eliminates D-A, then?

A. (Through Interpreter): I think to have concluded that the document I saw in Wilmington had the same number of rolls, the same description, the same number of pounds, and possibly the same amount of freight. And, obviously, I observed at that time that—I could have observed at that [795] time that the document shown to me was a larger piece of paper than the bill of freight.

Q. Did you notice that the document that you observed in Wilmington showed that Dulien Steel Products Company of California was the consignee?

A. (Through Interpreter): I didn't become aware of that.

Q. But you are sure that it was a bill of lading that you saw?

Mr. Bunn: An original bill of lading?

Mr. Diether: Or a copy.

The Witness: (Through Interpreter): A conversation took place mainly between Mr. Sweeney and the Matson man, and it is possible that it was

(Testimony of J. B. Londono.)

a bill of lading. (In English) I say I remember I asked for the original to the man of Matson, and he told me that he can't show, because maybe it is in the cashier's hands, which cashier it was out of the office at that time, and I asked him for that document. (Through Interpreter) It was reproduced, you say? It was issued— (In English) issued. (Through Interpreter) That a document was issued without any exception as to the quality of the merchandise was damaged, and he told me that it was possible that Dulien had given a guarantee to Matson in Honolulu. [796]

Q. Did you ever inquire from the cashier of Matson whether or not they secured a bill of lading?

Mr. John Morrow: Just a minute. Matson moves to strike any reference to Matson having—the shipper having possibly given a guarantee to Matson, as not responsive and a conclusion.

Mr. Dasteel: I join in that.

Mr. Bunn: The conversation is the thing in issue apparently under the question, and he has told the whole conversation as he remembers it.

The Court: I think that is right. It was in Matson's office in the presence of one of their agents. [797]

\* \* \*

The Court: I overruled the objections before and held that Mr. Bunn had established a foundation, and the testimony was that the man went and got the documents. Now I do not think an interloper would go and get any documents and say,



(Testimony of J. B. Londono.)

well, I cannot get this because the cashier is not here, [798] etc.

The motion to strike is denied.

Q. (By Mr. Diether): Did you ever inquire from the cashier of Matson whether he secured the original bill of lading? A. No.

Q. Or whether he had it in his possession?

A. No, because at the same time the man of Matson in Wilmington told us that the cashier was out, was not available.

Q. But you didn't go back and inquire again from the cashier? A. No.

Q. Whether he had received the original bill of lading? A. No.

Q. After you went to the bank on August 24, who did you first talk to?

Mr. Bunn: After he went to the bank? You mean in the bank?

Mr. Diether: He said he went to the bank on August 24 with, I think, Mr. Bunn.

The Witness: Yes.

Q. (By Mr. Diether): Who did you first talk to that day? A. I saw Mr. Moran. [799]

Q. And you had a conversation with him?

A. Yes. I handed to him the document I called at that time the bill of freight and asked him if he got another document from Dulien in order to pay the credit.

He take the document, bill of freight, he look and he said, "I paid against another document, a larger piece of paper."

(Testimony of J. B. Londono.)

Q. And did Mr. Moran at that time telephone anyone in your presence?

A. Not that I remember.

Q. Did he at any time tell you during that same conversation on that day that he had called Dulien in connection with the matter? A. No.

Q. Didn't he tell you that he had called Mr. Stanley about whether or not he delivered to the bank a bill of lading on the morning of July 29?

A. No.

Q. You don't remember any such statement?

A. No.

Q. Did you call Mr. Moran on the telephone a few days later after you had been to Wilmington?

A. Not that I recall.

Q. Did you ever tell Mr. Moran about your being to Wilmington and the document that you saw there in Matson's [800] office?

A. Not that I recall now.

Q. In connection with the first shipment that you made on the Mormacreed of 112- $\frac{3}{4}$  tons, you stated that you paid to the bank \$3050. Was it the same time that you paid that sum of money to the bank that the bank agreed to permit you to ship the wire upon payment of \$27 per ton?

A. It is too long a question. Will you read it?

(The question referred to was read by the reporter as follows: "Q. In connection with the first shipment that you made on the Mormacreed of 112- $\frac{3}{4}$  tons, you stated that you paid to the bank \$3050. Was it the same time

(Testimony of J. B. Londono.)

that you paid that sum of money to the bank that the bank agreed to permit you to ship the wire upon payment of \$27 per ton?")

Mr. Diether: That is, payment on account of your note.

The Witness (Through Interpreter): Yes, and the amount speaks for itself. That is, that I paid the bank \$3050 for 112 tons. That means \$27 per ton.

Q. (By Mr. Diether): Did you go to the bank again and ask permission to ship the wire without payment of any further payment on account of your note?

A. I asked to the bank through Mr. Bunn.

Q. Did you have any conversation with any officer of [801] the bank?

The Court: About what?

Mr. Diether: About permitting him to ship any additional wire to South America without further payment of account of the note.

The Witness: I don't remember. I remember well that I had the permission through Mr. Bunn. I don't remember if in one of that conversation I was present, but the fact is I had permission from the bank to ship the wire.

Q. Didn't you tell the bank that you expected a letter of credit in a few days and that you would be able to pay off the balance of the loan?

The Court: When?

Mr. Diether: At the time that he went to the

(Testimony of J. B. Londono.)

bank in connection with the securing of permission to ship the additional wire to South America without payment on account of the note.

The Witness: No. At that time I knew that I could not get letter of credit from Colombia for this wire because I knew it was rusty. I knew that I could not produce bills of lading and—(through interpreter)—consequently I considered it dishonest on my part to ask for letters of credit under those circumstances.

Q. But you had no such conversation with any officer of the bank at or about that time relative to furnishing for [802] delivery to the bank another letter of credit to pay the balance due on your note?

A. At that particular time, I don't remember.

Mr. Diether: Let me see Plaintiff's Exhibit 42.

(The document referred to was passed to counsel.)

Mr. Bunn: Is that your document or mine?

Mr. Diether: It is yours.

Q. I show you Plaintiff's Exhibit 42, which is the agreement——

Mr. Hubert Morrow: Item 42?

Mr. Diether: Plaintiff's Exhibit 42.

The Court: It is a contract of some kind.

Q. (By Mr. Diether): ——between Londono and Gonzales & Blanco. Did you see that document at any time prior to its being executed by Mr. Bunn for or on your behalf?



(Testimony of J. B. Londono.)

A. (Through Interpreter): This contract had my approval.

Q. It states in that contract that there is about 962 tons of wire remaining on the dock. Did you know that at the time that that document was signed?

A. Yes.

Q. How did you know that?

Mr. Bunn: Do you mean did he know it was in there?

Mr. Diether: How did he know there was 962 tons on the [803] dock.

The Witness (Through Interpreter): It was a conclusion which we arrived, taking into consideration there was a shipment that had been made. And we used very clearly the word "approximately."

Q. (By Mr. Diether): Then you didn't actually know by physical count how many tons there were there?

A. No, impossible.

Q. Did you ever reject any of the wire that you received for excessive weathering?

A. I refused all the wire—(through interpreter)—but as my money had been paid I obviously had to save as much as possible.

Mr. Diether: May that answer be stricken as not responsive?

The Court: It is responsive. Motion denied.

Q. (By Mr. Diether): When did you reject all of the wire?

Mr. Bunn: You mean on what date?

(Testimony of J. B. Londono.)

Mr. Diether: That is right.

The Witness: On July 31st when I saw the wire in Moore-McCormack Line. I told Mr. Sweeney, "Don't ship that wire to South America." [804]

Q. (By Mr. Diether): Who did you tell that to?

A. I told him, "Don't ship the wire to South America." But later in the afternoon, during the night maybe. I was thinking that my money it was paid, that I didn't know who was going to take the responsibility, who was going to protect me, so I decided to save as much as possible.

Q. Then what did you do?

The Court: You mean what did he do next?

Mr. Diether: That is right.

The Court: This is the 8th day of hearing what he did.

Q. (By Mr. Diether): Did you notify Dulien that you had rejected the wire?

A. I wrote Dulien a letter, August 1st, and I say to him——

Mr. Bunn: The letter speaks for itself.

The Court: Yes. [805]

Q. (By Mr. Diether): Is that the rejection you are referring to?

Mr. Bunn: I object to the question.

Mr. Diether: Well, strike that.

Q. (By Mr. Diether): Did you ever reject any wire that you received and so notified Dulien, other than this letter of August the 1st?

Mr. Bunn: You mean in writing or verbally?

Mr. Diether: In writing or verbally.

(Testimony of J. B. Londono.)

The Witness (Through Interpreter): The fact is that I didn't want to entirely accept any wire, but I was forced by the circumstances, and I didn't write any letters about it.

Mr. Diether: I move that the answer be stricken as not responsive. I asked him if he made any rejections to Dulien. I don't think it is responsive, your Honor.

The Court: I think it is responsive, although not wholly. Did you make any other statement to Dulien than the letter of August 1st?

The Witness: I accepted the letter from Dulien dated August 7th, and on those circumstances——

The Court: You testified you wrote the letter of August 1st, and you saw him August 5th.

The Witness: I wrote one letter to him. Yes, your Honor. [806]

The Court: And you had the conversation of August 5th, and the conversation lasted until the 7th.

The Witness: Yes; nothing more in writing.

Q. (By Mr. Diether): After you received the letter of August 7th, you went ahead and on the basis of that letter you took the wire?

Mr. Bunn: I object to that question. He didn't so state.

The Witness: No.

Mr. Bunn: You are trying to make him speak conclusions.

Mr. Diether: Why, that is just what he said.

(Testimony of J. B. Londono.)

Mr. Bunn: He can state what he said at any time and what he wrote at any time, but you are now asking him to solve a legal problem which is going to be before this Court, as to what was the legal effect of the conversations and the letter, and I think it is improper for that reason.

The Court: Objection sustained.

Q. (By Mr. Diether): After you received the letter of August 7th from Dulien, you continued to take wire, didn't you (interpreted)?

The Court: Is there any doubt about that?

The Witness: That is my answer. (Through interpreter): The facts are that I was trying to prove over and over again what it was.

Mr. Hubert Morrow: That is just argument, isn't it? [807]

The Court: That is all it is.

Mr. Hubert Morrow: Based on those facts.

The Court: It is argument. There is no use in going over it over, over and over again, in an effort to try to get the precise words in the witness' mouth that you want.

The Witness: Why are we here? Because of the facts.

Q. (By Mr. Diether): Did you ever attempt to renegotiate the price of the wire from Dulien after you got the letter of August 7th?

Mr. Bunn: I object to the question as calling for a conclusion.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you have any dis-



(Testimony of J. B. Londono.)

cussion with any representative of Dulien after August 7th relative to renegotiating the price of the wire?

A. After August 7th Mr. Dulien told Mr. Rendon in my presence that no negotiation because Gonzalez had taken the good wire.

Q. (By Mr. Diether): Anything else?

A. No.

Q. You said nothing further to any representative of Dulien about renegotiating the price of the wire?

Mr. Bunn: He says they told him there was no use in renegotiating.

Mr. Diether: Anything else? [808]

The Court: Counsel, do you mean to ask this witness now that he said nothing else after he has testified all about Mr. Bunn, and the letters, and the communications to the bank, and to Dulien, and the demands? Let's fix some time.

Mr. Diether: He has stated that he got this letter of August 7th.

The Court: All right.

Mr. Diether: And he has stated now that Dulien has told him he doesn't want to renegotiate because Gonzalez & Blanco took the best wire. Now, I want to know if he had any other conversation with any representative of Dulien about renegotiating the price of the wire, other than he has told us.

The Court: Other than he has told us?

Mr. Diether: Yes.

The Court: All right.

(Testimony of J. B. Londono.)

The Witness: No, not that I remember.

Q. (By Mr. Diether): Now, when did you first learn that you were short 81 tons of wire? [809]

\* \* \*

The Witness (Through Interpreter): When I was in Colombia, Mr. Bunn informed me that after removed the wire for Gonzalez & Blanco was a shortage. Whatever that day was, I don't remember. (In English): I have answered that three times, I think.

Q. (By Mr. Diether): Was it in 1947?

A. '46 or '47.

Q. Now, you have testified about certain percentages of quality of wire that you received. Can you tell us——

Mr. Bunn: That he shipped.

Mr. Diether: He said he got, as I remember, 1,919 tons. Now, of that wire you received, which is 1,919 tons, how many [810] tons of that quantity was equal to the roll of black wire which is marked here as Plaintiff's Exhibit 54, for identification?

Mr. Bunn: If you know.

The Witness (Through Interpreter): This is something that I cannot make a precise estimate on. I have already testified to the quantity of wire that was of the different conditions.

Q. (By Mr. Diether): Can you tell us in percentage what percentage of the total quantity of wire you received was equal to the roll which is

(Testimony of J. B. Londono.)

marked Plaintiff's Exhibit 54, which is the black roll?

A. (Through Interpreter): More or less, it is 20 per cent.

Q. What percentage did you receive of the total quantity, that is 1,919 tons, of the next roll, which is Plaintiff's Exhibit 53, for identification?

A. Excuse me, Mr. Diether. I am referring at this time to the quantities I shipped.

Q. I am asking you of the whole 1,919 tons that you received, what quantity was equal—

A. No, because I was not present when Gonzalez moved the wire from the dock.

Q. Didn't you see it on the dock?

A. I saw it on the dock, but—(through interpreter) I [811] didn't examine roll by roll, but I saw it all as rusty.

Q. How could you make an estimate of the quantities of the different kinds of wire that you shipped, and you can't make an estimate of the percentage of the total quantity that you received?

Mr. Bunn: I think that is argumentative. I object to it upon that ground.

Mr. Diether: Why is it he could do it in one case and why can't he do it in another?

Q. (By Mr. Diether): How did you arrive at it in one case?

The Court: Overruled.

The Witness (Through Interpreter): The wire that was removed from Long Beach pier to the piers of Moore-McCormack and Grace—(In Eng-

(Testimony of J. B. Londono.)

lish) Grace Line—(through interpreter), were examined by me, while the ones that was left was not examined as closely. And, also, because in Colombia I was informed as to the quality of the wire received there.

Q. (By Mr. Diether): Do you base your percentages which you gave in Court the other day on what somebody told you in Colombia, or what you actually saw yourself?

A. I saw myself. [812]

\* \* \*

Q. (By Mr. Diether): Mr. Londono, I call your attention to page 223 of your deposition, beginning at line 16, over to and including line 12 on page 224.

The Court: What was the beginning page?

Mr. Diether: 223, your Honor.

The Witness: Line?

Mr. Diether: Line 16.

The Witness (Examining deposition): Yes.

Q. (By Mr. Diether): Did you testify at the time your deposition was taken as follows:

“Q. Mr. Londono, did you ever exercise your right under this contract dated July 12, 1946, and reject 300 tons of barbed wire?

“A. I did not have the opportunity to exercise that right because in accordance with information [814] received from Gonzalez & Blanco, Dulien removed what they think to be 300 tons before Gonzalez finished taking the wire that they purchased from me.



(Testimony of J. B. Londono.)

“Q. Do you recall on what date Dulien took this 300 tons of wire that you refer to?

“A. No.

“Q. Was it before Gonzalez & Blanco started to take their wire?

“A. No, it was during the time that Gonzalez was moving their wire.

“Q. Then as I understand it, you never have notified the Dulien Steel Company that you were rejecting 300 tons of this wire that you did receive which amounted to around 1919 tons?

“A. No. During my visit to the Dulien office with Mr. Bunn on September 4 I notified Dulien that I reject all of the wire.”

Did you so testify at the time your deposition was taken?

A. Yes. And I don't change that testimony.

Q. Is that testimony that I have just read to you from your deposition, is that the truth?

The Court: He said, “I don't change that testimony.”

The Witness: Yes.

Mr. Diether: Thank you. [815]

Q. How many rolls of wire did you receive in this 1919 tons? A. I don't know by rolls.

Mr. Diether: What was that?

Mr. Bunn: He said, “I don't know by rolls.”

The Court: He answered, “I don't know by rolls.”

(Testimony of J. B. Londono.)

Q. (By Mr. Diether): Did you receive any 28-pound rolls? A. Yes.

Q. How many?

Mr. Bunn: If you know.

The Witness: I don't know how many.

Q. (By Mr. Diether): Were they all galvanized wire? A. A few galvanized and a few black.

Q. They were both black and galvanized?

A. I have the report from Cartagena about that particular load when we shipped the small coils. Would you like to hear that report?

Mr. Diether: Would you read the answer, Mr. Reporter?

(The answer referred to was read by the reporter as follows: "A. I have the report from Cartagena about that particular load when we shipped the small coils. Would you like to hear that report?" [816])

Q. (By Mr. Diether): You don't know how many rolls, how many 28-pound rolls of wire you received in that 1919 tons?

The Court: He just got through saying he did not. [817]

Q. (By Mr. Diether): After you shipped the 1,051 tons to South America, when did you instruct Mr. Mattoon, or Mr. Sweeney, not to ship any more wire to South America?

Mr. Bunn: I object to the question. It assumes a fact not in evidence. He has not so testified.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you ever at any

(Testimony of J. B. Londono.)

time instruct Mr. Sweeney not to ship any wire to South America?

Mr. Bunn: At any time at all?

Mr. Diether: Well, after he had begun shipping wire to South America.

The Court: You mean, not to ship any wire at all?

Mr. Diether: No. I think the witness has testified that he shipped 1,051 tons. The instructions he gave to the bank were to ship 2,000 tons of wire to South America.

The Court: He has also testified that he told Mr. Sweeney not to segregate or ship the last rusty wire.

Q. (By Mr. Diether): Now, I want to know when he told Mr. Sweeney not to continue to ship the wire, after the 1,051 tons were shipped.

A. After the shipment of 500 tons to Buena-ventura, it was— (through Interpreter) it was moved— (in English) from Pier 1-A, Long Beach, to Grace pier.

Q. Was that in September?

A. It was about September, Mr. Diether. [818]

Q. About September 1st?

Mr. Bunn: Do you know exactly?

The Witness: No. It was——

Q. (By Mr. Diether): Sometime in September?

A. Sometimes in September, or October, or November.

Q. I desire to show the witness items Nos. 41, 44 and 45 on Defendant bank's list, and which

(Testimony of J. B. Londono.)

have been marked by the clerk as Exhibits C-Q, C-R and C-S, for identification. I have shown them to all counsel.

(The documents referred to were marked Defendants' Exhibits C-Q, C-R, and C-S, for identification.)

Q. (By Mr. Diether) (Continuing): I show you a letter from Indies Terminal Company to Mattoon & Company, dated January 29, 1947, which is Defendants' Exhibit C-Q, for identification. Have you ever seen that letter before? A. No.

Q. Did Mr. Sweeney ever discuss with you the wire which is therein referred to——

Mr. Bunn: I object to that.

Q. (By Mr. Diether): ——which is 610 rolls?

Mr. Bunn: I object to that question as incompetent, irrelevant and immaterial. It ties the question into a document which the man says he has never seen before. Now, he must eliminate his language in the question from that paper. [819]

Mr. Diether: Yes, I have. I asked him if Mr. Sweeney had ever discussed with him the 610 rolls.

Mr. Bunn: Mentioned in that letter, you say?

Mr. Diether: Well, located on the Moore-McCormack dock on or about January of 1947.

The Witness: I testified yesterday that in April, 1947, Mr. Sweeney of Mattoon & Company told me that some barbed wire, it was at Moore-McCormack dock; that I went to Moore-McCormack dock, that I identified like my wire, and I did



(Testimony of J. B. Londono.)

ship it to Colombia in order to avoid the— (through interpreter) demurrage— (in English) and the exact quantity was 477 rolls of rusty wire.

Q. (By Mr. Diether): Did you ever tell Mr. Sweeney you wanted to abandon that wire (interpreted)?

A. (Through Interpreter): I didn't tell him. I actually abandoned the wire.

Q. I show you Defendants' Exhibit C-S for identification. Have you ever seen the original of that letter or the copy which I am now showing you?

A. No.

Q. I show you Defendants' Exhibit C-R, for identification, which purports to be a letter from Mattoon & Company to Indies Terminal Company, dated April 24, 1947. Did you ever see the original or a carbon copy of that letter?

A. No, I haven't seen the letter. [820]

Q. Did you sell that wire that you shipped to South America in April of 1947 with the charges paid, or did you put it free on board here in Los Angeles, or did you sell it in South America?

Mr. Bunn: F.O.B. in South America?

Mr. Diether: F.O.B. in South America.

The Witness: I sold the wire after the wire arrived, after duty payments and all expense payments.

Q. (By Mr. Diether): Well, how much net did you receive per ton for that wire?

A. I received five pesos, five Colombian pesos per coil.

(Testimony of J. B. Londono.)

Q. How much net did you receive for it, then, in American money?

A. The equivalent, you say?

The Court: How many coils? You have said five pesos per coil?

The Witness: Yes, your Honor.

The Court: Do you remember how many coils there were?

The Witness: 477.

Q. (By Mr. Diether): Were those 100-pound coils? A. 100-pound coils.

The Court: What was the rate of exchange at that time?

The Witness: About 1.96, your Honor.

The Court: That is about 1.96 Colombian pesos to one [821] American dollar?

The Witness: 1.96 per American dollar.

Mr. Bunn: That is 1.96.

The Court: Yes.

Mr. Bunn: Is not the actual figure reported in the answers to the interrogatories?

The Witness: My calculation was made at the time of the deposition. I said about \$7.50 per ton net. That means after I paid the freight here, the dock charges in Colombia, the duty. The duty was reduced by the customs 70 per cent, because the wire was rusty.

Q. (By Mr. Diether): In other words, you got \$7.50 per ton net here in Los Angeles?

A. No, net in Colombia.

Q. Net here in Los Angeles? [822]

(Testimony of J. B. Londono.)

\* \* \*

Cross-Examination

By Mr. John Morrow:

Q. Mr. Londono, I show you Exhibit 7, the original freight bill. As I understood your testimony, you stated that you discovered Exhibit 7, that is, the freight bill, was not a bill of lading about August 24, 1946, when you talked to Mr. Koppel? A. August 23.

Mr. Diether: August 23rd, the witness said.

Q. (By Mr. John Morrow): August 23rd. Excuse me. A. Yes.

Q. Then on the next day, August 24, you talked to Mr. Sweeney about that document?

A. Yes.

Q. And you told Mr. Sweeney what Mr. Koppel had told you? A. I think so.

Q. And at that time you asked Mr. Sweeney if he had ever received any other document from the bank? A. Yes.

Q. And as I understand it, Mr. Sweeney then stated to [823] you that the freight bill was the only document which he had ever received, or which had ever been delivered to him by the bank?

Mr. Diether: Just a moment, your Honor please. I would like to object to that as being hearsay testimony so far as the bank is concerned.

The Court: You can reserve your motion to strike it. Motion denied.

(Testimony of J. B. Londono.)

Mr. Diether: May all this testimony be subject to the same objection?

The Court: It is subject to your objection and subject to your motion.

Mr. Dasteel: Same objection.

The Witness: Will you read the question?

(The question referred to was read by the Reporter as follows: "Q. And as I understand it, Mr. Sweeney then stated to you that the freight bill was the only document which he had ever received, or which had ever been delivered to him by the bank?"

The Witness: Yes.

Q. By Mr. John Morrow): You and Mr. Bunn went to the bank on August 24, 1946?

A. Yes. [824]

Q. And had a conference with various officers of the bank, did you not? A. Yes.

Q. The officers present at that conference included the president, Mr. Ivey?

A. I think so.

Q. Mr. Fosvett and Mr. Emshoff?

A. I am sure about Mr. Fosvett and Mr. Emshoff.

Q. Mr. Bunn and yourself?

A. And Mr. O'Neil.

Q. And Mr. O'Neil, representing the bank at that time? A. Yes.

Q. You had seen Mr. Moran in the bank that same day before you had the conference with the bank officers?



(Testimony of J. B. Londono.)

A. Yes. The first person I saw in the bank that day was Mr. Moran in the foreign department before the conference with the other officers of the bank.

Q. And at the conference with the bank officers on that day Mr. Bunn stated in your presence, did he, to the officers of the bank that the bank had paid Dulien against the freight bill instead of a bill of lading? A. Yes.

Q. And Mr. Fosvett answered that he knew nothing about it because he was not in charge of the foreign department? A. Yes. [825]

Q. And Mr. Fosvett also stated to you and Mr. Bunn at that time that he would telephone Mr. Schroeder in Oregon where he was on his vacation?

A. Yes, that he will try to reach Mr. Schroeder.

\* \* \*

Q. After that conference on August 24th with the officers at the bank and before you filed this action, which I believe was in July, 1947, did Mr. Fosvett or anyone else in the bank or connected with the bank ever state to you that the bank had not paid Dulien against the freight bill?

A. Not that I remember. [826]

\* \* \*

Q. In other words, you do not recall that any such statement was made, is that what you mean?

A. No.

Mr. Bunn: Sometimes when he says "no"—you asked him a question in the negative and he an-

(Testimony of J. B. Londono.)

swered in the negative. You had better be sure you understand each other.

Q. (By Mr. John Morrow): To clear the matter up, is it your best recollection at the present time that no such statement was made to you or any simliar statement?

The Court: Such or similar? I think maybe we had better be a little more literal with this witness.

\* \* \*

Q. Do you recall any similar statement having been made to you by Mr. Fosvett or anyone connected with the bank? [827] A. No.

Q. At any time after August 24, is that correct? A. No.

The Court: What do you understand by "similar statement"?

The Witness: The same fact in different words.

The Court: If the bank had told you that they had paid on a bill of lading, would you consider that a similar statement to the one that they had not paid on a bill of freight?

The Witness: No, your Honor.

The Court: That is a similar statement.

Q. (By Mr. John Morrow): I will ask you if at any time after the conference on August 24, 1946, did Mr. Fosvett or any other officer or person connected with the bank state to you that the bank had paid on the freight bill? [828]

\* \* \*

(Testimony of J. B. Londono.)

The Court: Paid Dulien on a bill of lading, is that what you mean?

Mr. John Morrow: Paid Dulien on a bill of lading.

The Witness: No.

Q. (By Mr. John Morrow): Or make any statement in substance or in effect similar or the same?

Mr. Diether: That is just asking the same question.

The Court: When I asked the witness a moment ago if he considered something similar he said he did not, so I think you had better be more literal, counsel.

Q. (By Mr. John Morrow): Do you understand what "substance" means, Mr. Londono?

A. (Through Interpreter): Yes, I understand.

The Court: Did they make a statement like that but not in those words?

The Witness: No, your Honor.

Q. (By Mr. John Morrow): About August 29, 1946, in the afternoon, you met Mr. [829] Moran of the bank on the corner of Fourth and Spring Streets, did you? A. Yes.

Q. You had a conversation with him, as I understand it. A. Yes; long conversation.

Q. And you told him that you had many troubles on account of the wire and that you could not sleep?

A. Yes.

Q. And Mr. Moran stated to you at that time that he also could not sleep because he had made a

(Testimony of J. B. Londono.)

mistake in the bank?      A. Yes.

Q. Mr. Moran also told you at that time that nobody in the bank wanted to take the responsibility of the mistake?      A. Yes.

Q. Or of the error?

A. He used the word "mistake."

Q. He used the word "error," did he?

A. Mistake.

Mr. Diether: He said mistake.

The Witness: The conversation that took place in Spanish, error or mistake are the same.

The Court: What is error?

The Witness: Error. It is equal—— [830]

The Court: To mistake?

The Witness: Mistake or error is the same.

Q. (By Mr. John Morrow): And it was during that same conversation that Mr. Moran asked you about the opportunity for him to get work in South America?

A. He asked me about the condition of work in South America, and I told him that in South America there are many opportunities for people like him that speak English and Spanish.

Q. Did he indicate to you that he was inquiring in that respect about work for him?

A. No. [831]

\* \* \*

The Witness: At the same time before the conversation finished, he told me that the bank asked him a statement of his conversations with me, telephone conversation with me, the day of the 29th of July.



(Testimony of J. B. Londono.)

Q. (By Mr. John Morrow): Mr. Londono, my question went as to anything that was said about South America. Was there anything else said about South America?

A. No, but I understood you to say that that was all the conversation.

Q. I am speaking of South America.

A. I see.

Q. And on September 4, 1946, you and Mr. Bunn went to Dulien's office and had a conversation with Mr. Grinstein? A. Yes. [832]

Q. And Mr. Bunn in your presence stated to Mr. Grinstein that the bank had paid Dulien on the letter of credit against the freight bill and not on the bill of lading?

\* \* \*

The Witness: Yes. [833]

\* \* \*

Q. And when Mr. Stanley was present, Mr. Grinstein repeated Mr. Bunn's statement?

A. Yes.

Q. That is, Mr. Grinstein in front of Mr. Stanley? A. Yes. [834]

Q. Mr. Stanley then stated that he had left the bill of lading at Matson's Wilmington office and had presented the freight bill to the bank instead of the bill of lading?

\* \* \*

The Witness: Yes.

The Court: And I think Mr. Stanley also said

(Testimony of J. B. Londono.)

he had left the bill of lading at the office. That was your question?

Mr. John Morrow: That was my question, your Honor.

Q. (By Mr. John Morrow): After Mr. Stanley made the statement just referred to, did Mr. Grinstein appear to be angry?

\* \* \*

The Witness: Mr. Grinstein by his expression show him very angry, and told Mr. Stanley don't talk on that matter and that matter will be—(through Interpreter) that matter would be transferred to Mr. Dulien's attorney. [835]

\* \* \*

Q. (By Mr. John Morrow): As I understand it, Mr. Londono, you first saw some chalk marks on the dock at Long Beach where the ship was unloaded around the 5th of August, 1946?

\* \* \*

The Witness: I am sure that the first time I saw the marks, the chalk marks on the dock, it was the 5th, when I was with Mr. Grinstein there, but—(through Interpreter) but I cannot be as certain that I didn't see them before, or that they were not there before. [836]

\* \* \*

Q. (By Mr. John Morrow): Yes. Those were the chalk marks that had the names on them?

A. Of Dulien Steel Products and Gonzalez &

(Testimony of J. B. Londono.)

Blanco. On the big pile, the biggest pile on the right, Gonzalez & Blanco, and on the left looking to the boat, it was Dulien Steel Products.

Q. Did you at any time on that occasion when you first saw the chalk marks or at any time afterwards ever see any marks on the dock with the name of Londono?      A. No, never.

\* \* \*

Cross-Examination

By Mr. Laven:

Q. Mr. Londono, you have mentioned that Mr. Rendon was with you on several occasions. Will you tell us why he was with you on these occasions when you went down to the Dulien Steel Company's offices?

Mr. Bunn: I object to the question. It calls for a [837] conclusion and does not go to any of the issues in the case.

The Court: It is cross-examination. I think he may ask about that. Answer the question.

The Witness: Will you please read it?

(The question was read by the Reporter.)

The Witness: Mr. Rendon was practically my agent.

Mr. Laven: I couldn't hear that.

The Court: "Mr. Rendon was practically my agent."

The Witness: —in any my transactions here in California during February, March, May, June,

(Testimony of J. B. Londono.)

July, until November. He know the place. He has a car. He drove all places, and I offer him commission for all my business here in California. [838]

\* \* \*

The Court: What was your relationship with Mr. Rendon in connection with that transaction?

The Witness: He was my closest friend at that time. He drove me, he was with me at Dulien's place July 11th. He was——

Mr. Laven: During the time——

The Court: Wait a minute. He is trying to answer your question.

Mr. Laven: I am sorry.

The Court: He wasn't talking to you then.

The Witness (Through Interpreter): He was companion. He was an observer.

The Court: Did you have any agreement with him prior to that time that he was to receive any compensation for any work he might do in either driving you, or anything else in that connection?

The Witness: Yes, your Honor. I used to pay commission to him. Not on that particular transaction, we didn't make [841] the agreement.

The Court: But on that transaction at the Dulien Steel Company you did not make the agreement?

The Witness: No, before, not later. Not on that particular transaction.

The Court: On that transaction you did not have any agreement with him?

The Witness: No, your Honor.



(Testimony of J. B. Londono.)

The Court: Did you later pay him a commission on that?

The Witness: No. May I say my recollection is that at the time Mr. Stinson and Mr. Tuthill were at the Dulien office on the 12th, they agree between Mr. Tuthill, Mr. Rendon and Mr. Stinson that the commission that Dulien was going to pay will be—(through Interpreter) split in three parcels—(in English) one for Mr. Tuthill, one for Mr. Stinson, one for Mr. Rendon—(through Interpreter) and, to my knowledge, it was not complied with by Mr. Stinson and Mr. Tuthill.

The Court: It was not complied with?

The Witness (Through Interpreter): It was not complied. As this business meant for me so much loss, Mr. Rendon didn't ask me for any compensation.

Q. (By Mr. Laven): Mr. Londono, is that the only reason why you didn't pay Mr. Rendon, because you lost so much money on this [842] transaction?

A. Yes, and I suppose—(through Interpreter) and if I know that Tuthill and Stinson didn't pay him anything, I would have paid him some commission.

Q. Mr. Londono, did you not first learn that this wire was available at Dulien Steel of California through Mr. Rendon?

A. Will you read that question again?

(The question was read by the Reporter.)

(Testimony of J. B. Londono.)

A. Yes. [843]

Q. And what was Mr. Rendon's business at the time that you learned that this wire was available from Dulien Steel?

A. He was in export business here in Los Angeles.

Mr. Diether: What was that?

The Court: Export business here in Los Angeles.

Q. (By Mr. Laven): And when Mr. Rendon first told you about this wire being available, did he tell you at that time the amount of commission that he expected to be paid if you made the purchase? A. No.

Q. Now did you have any previous agreement with him or arrangement as to what commission he was to receive for locating or finding the barbed wire for you? A. Not in particular.

Q. Did you have any kind of an arrangement or understanding—maybe you understand that word better? A. Not in particular.

Q. Well, did you pay him anything as to compensation?

Mr. Bunn: He said he paid him nothing. [844]

\* \* \*

The Court: What is the materiality of this?

Mr. Laven: The materiality, your Honor, is if Mr. Rendon acted as his agent at that particular time, what arrangements he had with him at the time that the deal was consummated may have a

(Testimony of J. B. Londono.)

particular bearing upon the transaction in so far as the liability of the various defendants is concerned.

Mr. Bunn: I cannot see it. I object to it as immaterial.

The Court: I cannot see it. You mean you expect to develop that Mr. Rendon did certain things which have not yet been disclosed? [845]

Mr. Laven: No, I believe that by establishing that there was an agency between Mr. Londono and Mr. Rendon that when he was along with him at the time the contract was entered into, that Mr. Rendon was there for the purpose of explaining to and acting as the agent of Mr. Londono.

The Court: You mean as his interpreter?

Mr. Laven: Yes.

The Court: He has testified that he had Mr. Rendon interpret occasionally for him, explain things to him.

Mr. Laven: As a friend, your Honor, not as an employee. I think there is a great deal of difference.

The Court: What difference does it make? I cannot see it, counsel. Suppose he had an agreement with Rendon that he was going to pay him a commission if he found this wire and made a deal. What difference could it possibly make in the liability of the United States?

Mr. Laven: It could make this difference, your Honor, that if this man acted as his agent and he relied upon his agent to interpret the contract to him, and the contract was not ambiguous, it was

(Testimony of J. B. Londono.)

clear as to excessive weathering and as to the amount of wire that was to be rejected, then he fully understood the terms of the contract at that time and his claim that he didn't understand it, which he has already testified to, there would be a conflict in that testimony. He has gone into it on direct and I believe that we have a right [846] to go into it on cross.

The Court: I do not believe that he said that he did not understand it. He said he did not pay any particular attention to that portion of it. He said that he reads and understands English.

Mr. Laven: I believe so far as the words "excessive weathering," I don't believe he said he didn't understand that.

The Court: No.

Mr. Diether: No, that is not my understanding.

The Court: He never made any claim that he did not understand it. [847]

\* \* \*

Q. Mr. Londono, did you read the contract?

A. I supposed to read the contract. I signed the contract. I have testified on that matter.

\* \* \*

Q. Were you present in the office of Dulien Steel Products, Inc., on July 12, 1946, when Plaintiff's Exhibit 2-A was being prepared?

A. Yes.

Q. Do you know who dictated the terms and conditions that are contained in Exhibit 2-A?



(Testimony of J. B. Londono.)

A. Yes, Mr. Grinstein to Mr. Stanley. [848]

\* \* \*

Q. Were you present when Exhibit 2-A was dictated by Mr. Grinstein? A. Yes.

Q. Did you hear him dictate to Mr. Stanley the words, "acceptance of material subject to rejection by buyer of not more than 300 tons due to excessive weathering"? [849]

A. (Through Interpreter): I could have heard it but I didn't take it into consideration.

\* \* \*

Q. Mr. Londono, you read Plaintiff's Exhibit 2-A, did you not, before you signed it?

A. I have in my presence, I had it in my presence, I supposed to read and take into consideration the quantity, about the gauge, price and maybe I read all the contract and—(through Interpreter) I didn't find any objection and that is why I signed it. [850]

Q. Did you read the words——

Mr. Diether: Just a moment. May we hear that last answer?

The Court: I did not find any objection and that is why I signed it. That is almost the identical answer he gave when somebody else asked him that question.

\* \* \*

Q. (By Mr. Laven): Mr. Londono, you received the samples, which are Exhibit 36, on July 11th, did you not?

(Testimony of J. B. Londono.)

A. I say that I am 99 per cent sure that it was the 12th. I testified to that. [851]

\* \* \*

Q. At the time these samples were given to you, which are Exhibit 36, Mr. Londono, did you notice the red particles that are on these samples?

A. (Examining samples.)

Q. Or red appearance?

A. I did not perceive them.

Mr. Laven: What was that?

The Court: You asked him if he noticed them and he said he did not perceive them.

Q. (By Mr. Laven): Mr. Londono, are these samples in substantially the same condition, so far as the red appearance is concerned, as when you obtained them from Mr. Grinstein on July 12, 1946?

The Court: Counsel, I wonder if you would indicate to [852] me what you consider red. The word is going into the record.

(The sample referred to was passed to the court.)

Mr. Laven: There are some particles of red all over these, your Honor.

Mr. Diether: May they be marked with a separate number?

The Court: Have you some expert, a color man here? I cannot see red on that.

Mr. Laven: I can, your Honor.

(Testimony of J. B. Londono.)

(The sample referred to was passed to the court.)

The Court: This is a little brownish but I certainly do not see anything that deserves to be designated red in the record.

Mr. Laven: May we have each of these marked separately?

The Court: Hand me the rest of them, the red particles. You designate to me, Mr. Laven, what you consider to be red as you hand them up to me.

(The samples referred to were passed to the court.)

The Court: Did you have a spyglass there?

The Witness: No, your Honor.

Mr. Laven: May we have this one marked? I particularly call attention to the barbs, near the barbs, there is a red or brownish appearance. Maybe my color isn't quite good. Or it may be maroon.

The Court: You want this one marked especially?

Mr. Laven: Yes, your Honor. Each one of them. [853]

(The sample referred to was marked Plaintiff's Exhibit 36-A for identification.)

The Court: What is that?

Mr. Laven: That will be 36-B.

(The sample referred to was marked Plaintiff's Exhibit 36-B for identification.)

(Testimony of J. B. Londono.)

Mr. Laven: The next one is 36-C.

(The sample referred to was marked Plaintiff's Exhibit 36-C for identification.)

The Court: Where is the red here?

Mr. Laven: Near the barbs, your Honor, in each of the barbs and along the double twist of the wire.

The Court: I will say for the record that I cannot see any red.

Mr. Laven: Or maroon or brown.

The Court: There is a slight little brownish tinge. I can barely see that on here even with this glass, in between the barbs, but there is no red.

Mr. Laven: I would say it is maroon or brownish. Maybe my color designation isn't quite correct.

Next one is 36-D.

The Court: This is 36-D.

(The sample referred to was marked Plaintiff's Exhibit 36-D for identification.)

Mr. Hubert Morrow: 36-D has some color, your Honor. [854]

The Court: 36-D has some brownish color on one of the barbs.

Mr. Hubert Morrow: It isn't as red as your necktie, but it is on the reddish side.

The Court: It is rust color, brownish.

Mr. Dasteel: That designates it.

Mr. Laven: All these I have been referring to possibly are rust color instead of red.



(Testimony of J. B. Londono.)

The Court: Or Hawaiian dust color.

Mr. Laven: That I will agree to, your Honor.

The Court: I cannot see it.

Mr. Hubert Morrow: Here it appears to be maroon.

Mr. Bunn: I don't stipulate to that at all.

Mr. Hubert Morrow: Here is some maroon right where I am indicating.

(The sample referred to was passed to the court.)

The Court: Yes, there is some slight discoloration there.

Mr. Bunn: Where is it located, if I may ask?

The Court: It is located on the upper strand of the wire as I now hold it in my hand, and it is about a quarter of an inch in length and brown; there is some kind of smear here.

Mr. Bunn: And is it visible to your Honor only through the magnifying glass?

The Court: No, I can see that there is something there. [855]

It is 36 next in order.

(The sample referred to was marked Plaintiff's Exhibit 36-E for identification.)

The Court: On this one which you were just looking at, where that red is, that rust color, I am going to take my thumbnail here and scrape a bit of it and see if it is still red (demonstrating). There is a little reddish color yet.

(Testimony of J. B. Londono.)

Mr. Laven: On 36-E, on the end of the wire, rather by the edge of the barbs and along the twist of the wire, is the same rusty color, rusty tinge.

(The sample referred to was passed to the court.)

The Court: It is very slight.

Mr. Bunn: I move to strike counsel's statement. He is not testifying.

The Court: I am observing it and I am the one who is going to have to judge it, and I will say if there is any rust on that it is very, very slight, and the evidence of rust on any of them that have been given to me so far is very, very slight.

(The sample referred to was marked Plaintiff's Exhibit No. 36-F for identification.)

Mr. Laven: Would your Honor say barely on this one?

(The sample referred to was passed to the court.)

Mr. Bunn: Are you trying to get a word in with the court testifying to connect with somebody else later? [856]

The Court: No, the same is true of this.

Mr. Laven: May we have each one of these marked? And here is the last one.

The Court: And the same is true of this one.

(The sample referred to was marked Plaintiff's Exhibit No. 36-G for identification.)

The Court: On this piece of wire which has just

(Testimony of J. B. Londono.)

been handed to me, somebody has apparently taken a piece of metal and scraped one end of one of the strands so that it appears as white metal underneath.

Mr. Laven: What number is that?

The Court: I do not know. Whatever it is.

Do you want the spots on there marked separately?

Mr. Laven: No, your Honor. There are too many of them, I am afraid.

Mr. Bunn: I move to strike that remark of counsel.

The Court: There are plenty of letters in the alphabet for numbers to be used.

The Clerk: The last one will be No. 36-G, your Honor. [857]

\* \* \*

Mr. Laven: Do you have the last question?

The Court: I think the last question was whether or not he saw the red spots.

Mr. Laven: The rust-colored spots, may it please your Honor.

Q. (By Mr. Laven): Mr. Londono, did you notice—I call you attention to Exhibit 36-B and ask you if you noticed the particles of grease or foreign matter on that exhibit at the time that Mr. Grinstein gave you the samples?

A. (Through Interpreter): At the time I received the sample it had more grease, and all I could observe was the beautiful black color and fresh grease, wet.

(Testimony of J. B. Londono.)

Q. Let me direct your attention to the portion, the second space from the tag, and direct your attention to the light-colored material in that section as between the two barbs. A. Yes.

Q. And, also, to the dark-colored foreign matter. Did you notice that at the time?

A. (Through Interpreter): At the time that I observed the samples the wire had more grease on it, or maybe because since that time—43 months, I think you mentioned—that have taken place.

Q. I show you Exhibit 36-C, and draw your attention to the light portion or the light foreign matter in the [858] second space from the tag, and ask you if you noticed that foreign material on this sample at the time that Mr. Grinstein gave it to you? A. The same answer.

The Court: "The same answer," he says.

Q. (By Mr. Laven): Did you keep these samples in the same paper from the time that Mr. Grinstein gave it to you until you brought these into court, Mr. Londono?

A. I am not quite sure. I am sure this is the paper I—(through interpreter) I am sure this is the paper I used to give them to Mr. Bunn.

Q. Was this the same paper that you put them in after you received them from Mr. Grinstein on July 12, 1946?

A. I don't know if after I received from Mr. Grinstein.

The Court: Look on the paper and you will see some words "Crinoline oil," or something.



(Testimony of J. B. Londono.)

Mr. Dasteel: Not on that one, your Honor.

The Court: Is that on the other paper?

Mr. Dasteel: Yes.

The Witness: I can say is the paper I used to put the samples to deliver to Mr. Bunn.

Mr. Bunn: And let the record show what he has in his hand is the white paper, as distinguished from the buff paper.

The Court: Neither of the two pieces of paper have been [859] marked in evidence.

Mr. Laven: I think they should be, your Honor.

The Court: Very well. 36- what?

The Clerk: 36-H, your Honor.

The Court: 36-H.

Mr. Diether: Which one is "H"? The white one?

Mr. Laven: The white one.

\* \* \*

The Court: I haven't gotten quite straightened out. There appear to be three pieces of paper. There is a white piece of paper, there is a heavy brown piece of paper which looks suspiciously like a manila envelope as used in law offices, or a portion of it, and another larger piece of light-weight brown paper. 36-H, -I and -J, respectively.

(The documents referred to were marked Plaintiff's Exhibits 36-H, 36-I and 36-J, for identification, and were received in evidence.)

Q. (By Mr. Laven): Mr. Londono, I show you 36-1.

(Testimony of J. B. Londono.)

The Court: 36-1?

Mr. Laven: Yes. That was marked before.

The Court: Oh, that is the one——

Mr. Laven: That Dulien used. Yes.

Q. (By Mr. Laven): I draw your attention to the second [860] space from the tag, and ask you if you noticed the foreign material on that sample at the time it was given to you by Mr. Grinstein?

A. (Through Interpreter): I didn't see that foreign matter at that time, but inasmuch as no place where the wire has been it could have acquired it, I suppose—(in English) I admit—(through interpreter) that it was there.

Q. But you didn't see it?

A. I have answered.

Q. Did you not take these samples to an engineer friend of yours on 4th Street? A. Yes.

Q. And did you not there look at this wire under a microscope?

A. No microscope, but he inspect the wire. He saw the wire, and I have the name now here.

Q. What is his name?

A. The name is Herman J. Siemers, S-i-e-m-e-r-s, Inc., 236 East 4th Street, Los Angeles. And the engineer from Hunt, his name is Mr. H. L. Ebrigh, E-b-r-i-g-h, manager of the district, 658 Chamber of Commerce Building, Los Angeles, telephone Prospect 5892. These are the two gentlemen. (Through interpreter): These are the names of the two gentlemen that saw the wire when I brought the samples. [861]

(Testimony of J. B. Londono.)

Q. (By Mr. Laven): And what day was that, Mr. Londono?

A. About the first time, it was July 12.

Q. Were you there all during the time that they were making the examination? A. Yes.

Q. Or inspection of this wire?

A. Yes. And my best recollection now, Mr. Laven, I have been thinking about it and I am able to say that maybe Mr. Grinstein gave me more than seven pieces of this wire because I am sure that Mr. Siemens made the inspection—(through interpreter)—on one of the pieces, an inspection that necessarily would have taken the coating off the wire.

Q. Were you present during the time that he inspected the wire? A. Yes.

Q. And did he give you any report as to his findings? A. Yes, he find the wire good.

Q. What did he tell you?

Mr. Bunn: Let him finish.

Q. (By Mr. Laven): What did he tell you?

A. He told me that the wire was good, satisfactory.

Q. Did he tell you anything relative to the foreign particles that were on these samples? [862]

A. (Through Interpreter): Not in particular.

Q. Did he examine the same samples that you have produced into court here and are Exhibit 36 and all the subdivisions?

A. (Through Interpreter): He had in his hands all the samples and took one of the pieces. I don't

(Testimony of J. B. Londono.)

recall if this piece is among the samples that are here present.

Q. Tell us what you observed him do when he made the inspection of this wire.

A. I didn't observe anything outside that it was a good wire, unused, satisfactory.

Q. Possibly you didn't understand my question. What did you understand Mr.—what was his name?

A. Simmers, S-i-m-m-e-r-s. [863]

\* \* \*

Q. Well, on July 12 did you observe the wire under a microscope? A. No.

Q. Did you on the 13th or 14th?

A. Not at any time.

Q. Not at any time by you? A. No. [864]

\* \* \*

Q. Now, Mr. Londono, that is the extent of the examination that was made by Mr. Simmers?

A. (Through Interpreter): Mr. Simmers was not consulted by me as an expert but as a friend.

Q. But that is the extent, did he make any other inspection, other than what you have told us, just by looking at it?

A. He looked at the wire carefully, perhaps he will recall—he knew about the contract, I showed him the contract, and I told him that I bought the wire from those samples and—(through interpreter)—he told me it was all right. He didn't tell me that it was bad business, unfavorable, I would say.

Q. Did you show him this copy, that is, Exhibit



(Testimony of J. B. Londono.)

2-A, at the time that you showed him the samples of wire which are Exhibit 36 and its various subdivisions?

A. I suppose yes. I show him. Anyway, he knew about the deal that I bought 2,700 tons of wire from Dulien.

Q. Is he the only one on that day that made an inspection for you of the wire? A. Yes. [866]

\* \* \*

Q. And what is Mr. Ebrigh's business or occupation?

A. He is the manager of Hunt, and Hunt supposed to be—(through interpreter)—inspecting engineers of metals.

Q. Did you give the address where they are located? A. Yes.

The Court: Chamber of Commerce Building. Also the telephone number.

Q. (By Mr. Laven): When did he make the inspection? When did Mr. Ebrigh make the inspection, Mr. Londono?

A. Mr. Laven, he told me between July 12—

Q. Before July 12? [867]

A. Between July 12th and July 27th.

Q. Did he give you a written report?

A. No. I was with Mr. Rendon—(through interpreter) we didn't ask for a written report. He gave us his personal opinion and told us the wire was all right.

\* \* \*

(Testimony of J. B. Londono.)

Q. Now, Mr. Londono, in purchasing this wire from Dulien Steel Company of California, did you not rely upon the representations made to you by Mr. Grinstein and Mr. Dulien?

A. (Through Interpreter): I put all my faith on their word. That is the reason why I signed the contract and opened the credit at the bank.

Q. In other words, then, you relied upon what they [868] told you and upon the samples which they gave you?

A. (Through Interpreter): In view of the samples given to me and in view of the galvanized new rolls that was shown to me. [869]

Mr. Laven: May I ask——

The Court: I take it his answer is "Yes."

Mr. Laven: Is your answer "Yes"?

The Court: Including what he has stated.

Mr. Laven: Is your answer to my question "Yes"?

The Court: That you relied upon what they told you and the samples?

The Witness: Yes.

Q. (By Mr. Laven): One other question relative to that. And, also, the piles of black wire that they showed you in the yard on July 11th?

A. Of course, yes.

Q. Had you not believed those statements and the samples—if you had not believed the statements which they made to you, you would not have entered into this contract which is Exhibit 2-A?

(Testimony of J. B. Londono.)

A. Of course, no. [870]

\* \* \*

Q. (By Mr. Laven): Now, Mr. Londono, I draw your attention to Exhibit 51, for identification, and ask you how this roll of wire compares with the wire that you saw—the galvanized wire which you saw in Dulien Steel Company's place of business on July 11, 1946 (interpreted)?

A. (Through Interpreter): The wire that was shown to me at Mr. Dulien's had a brilliant color of new galvanized wire, while this is dirty and dull, a dull color, but is in the same condition, the same good condition.

Q. I don't understand your last statement, "in same good condition."

A. In good condition. I accepted the wire.

The Court: What he means to say is in that good condition, but the other looked new.

The Witness: Brand new, brilliant.

The Court: A bright color?

The Witness: Bright.

Q. (By Mr. Laven): In your opinion is Exhibit 51 for identification in good condition?

A. It is in good condition, it is usable wire. It is not brand new, but it looks like good wire, strong. It is not the wire I bought from Dulien, but—

Q. Well, this wire, is this Exhibit 51, for identification, [871] equal in strength, and as far as the sales price in South America was concerned?

Mr. Bunn: I object to the question as compound, uncertain, indefinite.

(Testimony of J. B. Londono.)

The Court: It is a little compound.

Mr. Laven: I will reframe the question.

Q. (By Mr. Laven): In your opinion is Exhibit 51, for identification, equal in quality to the wire which you saw at Dulien's—galvanized wire which you saw at Dulien Steel on July 11, 1946?

A. (Through Interpreter): Originally, the quality could have been the same, only this is a little bit dirty.

Q. Does the fact that this wire appears to be dirty affect its quality?

Mr. Bunn: That is a paradoxical question. That contradicts itself. I object to it as uncertain and indefinite.

Mr. Laven: I beg your pardon. I want to be heard.

Mr. Bunn: It might not have affected its sales, but it might have affected its quality.

The Court: Objection overruled. In his opinion——

The Witness (Through Interpreter): Perhaps it doesn't affect the quality, but it does affect the price.

Q. (By Mr. Laven): Mr. Londono, you had purchased other wire, had you not, from the War Assets Administration? A. Yes. [872]

Q. And was that galvanized wire?

A. It was black wire, rusty; and galvanized wire, too.

Q. (By Mr. Laven): Mr. Londono, you knew that the wire that you were purchasing, the barbed



(Testimony of J. B. Londono.)

wire that you were [873] purchasing from Dulien Steel, was not new wire?

\* \* \*

The Witness (Through Interpreter): I purchased the wire as new and unused, and the fact that it is surplus wire from the government doesn't imply necessarily that it would be old, because if it had been kept in a sheltered place, it would be new after a few years.

Q. (By Mr. Laven): Mr. Londono, you knew that the wire in Honolulu was not manufactured there, did you not?

The Court: What difference does that make? I bought a refrigerator and I knew it wasn't manufactured here, but it was new.

Mr. Laven: It is a foundation question, your Honor.

The Court: All right. Let's get on.

The Witness (Through Interpreter): I didn't know whether or not there were factories of barbed wire in Honolulu. I didn't take that into consideration. [874]

Q. (By Mr. Laven): Mr. Londono, did you not know that this unused wire that was purchased from the government had been shipped over to Honolulu during the war?

A. (Through interpreter): I was purchasing good wire. I didn't take into consideration whether it was made in New York or Los Angeles, or sent by boat or by airplane.

Q. Mr. Londono, did you count the number of

(Testimony of J. B. Londono.)

rolls of galvanized wire that were comparable in appearance to Exhibit 51, for identification, on the dock?

Mr. Bunn: Of the total 55,000, you mean?

Mr. Laven: Yes.

Mr. Bunn: And move them all by hand?

Mr. Laven: Kindly permit me—do not add to my question. It is complicated enough.

The Court: Yes, it is complicated.

The Witness: No.

The Court: He said, “No, he did not.”

The Witness: No.

Q. (By Mr. Laven): Mr. Londono, did you count the number of rolls that were comparable to Exhibit 52 for identification? A. No.

Q. That were unloaded from the White Squall?

A. No.

Q. Did you count the number of rolls that [875] were comparable to Exhibit 53, for identification,— A. No.

Q. —that were unloaded from the White Squall? A. No.

Q. Did you count the number of rolls that were comparable to Exhibit 54, for identification, unloaded from the White Squall?

A. No. (Through interpreter): And I didn't count the other rolls of different and poorer quality of wire that were on the dock at the time.

\* \* \*

Q. (By Mr. Laven): Do you know whether Mr.

(Testimony of J. B. Londono.)

Koppel was working for Gonzalez & Blanco in selecting the wire as it was [876] being unloaded from the White Squall on or about August 24, 1946?

A. (Through interpreter): I could not tell.

Q. Subsequently did you not employ Mr. Koppel to segregate the wire for you which came off of the White Squall?

\* \* \*

The Witness: Excuse me. (Through interpreter): The first contact I had with Mr. Koppel was through Mr. Moran at the bank, and afterwards Mr. Sweeney used the services of Mr. Koppel for the segregation of the wire on the dock.

Q. (By Mr. Laven): And that was on your behalf, Mr. Londono? That was for you?

A: Yes. [877]

Q. On which dock was that, Mr. Londono (Interpreted)?

A. (Through interpreter): The first time Mr. Koppel saw the wire was on Pier A-1, Long Beach. Afterwards, I don't know.

Q. Mr. Londono, calling your attention again to Exhibit 51, for identification, how much did you receive per ton for the wire that was comparable to this exhibit, for identification (interpreted)?

A. (Through interpreter): We didn't make any separation of the wire when sold to Mr. Echavarria. I received from him \$75 per ton, f.o.b., Los Angeles, and including all the wire, the good, the not so good, the bad, and the black. [878]

Q. That is, that the four samples you sold as

(Testimony of J. B. Londono.)

a lot, including Exhibit 54, for identification, 53, 52 and 51.

A. (Through interpreter): There were many other qualities perhaps poorer than the ones shown here.

Q. Do I understand that you included some rolls that were poorer than any of these samples here that are represented by these exhibits that you sold to Mr. Echavarria for \$75 a ton? A. Yes.

Q. About what portion of the wire that you sold to Mr. Echavarria, was represented by Exhibit 53 for identification?

A. I cannot precisely tell.

Q. What percentage of the wire that you sold to Mr. Echavarria was represented by the sample which is 52 for identification?

A. As to what was usable in Colombia, it would apply to this type of wire, the proportion was 50 per cent.

Q. 50 per cent of the wire that you sent to Mr. Echavarria and for which you received \$75 per ton is represented by Exhibit 52 for identification?

A. That is my estimate.

The Court: 50 per cent or worse, as I understood from his previous testimony. That is, it was similar to 52 or worse than 52—or was it 53? [879]

The Witness: 52, your Honor. I have no report of the number of rolls in each quality. Mr. Echavarria after some bargaining accepted to buy the



(Testimony of J. B. Londono.)

wire at \$75 per ton as a lot and I didn't think it was unjust.

Q. (By Mr. Laven): Of that lot that you sold him, more than 50 per cent was represented by 52 for identification? A. That is my opinion.

Q. Now can you tell us about what portion of the wire that you sold to Mr. Echavarria for \$75 a ton was represented by 54 for identification?

A. Mr. Echavarria accepted 25 per cent of good wire—accepted to call good wire 25 per cent of wire represented by 54 and 51, but he didn't make any separation as to quality of these two lots.

Q. Then your answer is that No. 54 represented about 25 per cent of the wire that Mr. Echavarria paid you? A. 51 and 54.

Q. Those two together represented 25 per cent?

A. Yes.

Q. And 53 and 52 represent 75 per cent of the wire for which he paid you \$75 a ton?

A. More or less. [880]

\* \* \*

Q. (By Mr. Laven): Now, Mr. Londono, you stated that you actually received 1919 tons of barbed wire, is that correct? A. Yes.

Q. How many additional tons of wire did you reject?

Mr. Bunn: I object to the question as uncertain and indefinite. I don't understand it myself.

The Court: How many additional tons?

Mr. Laven: How many tons of wire did he reject? [886]

(Testimony of J. B. Londono.)

Mr. Bunn: You said "additional."

Mr. Laven: In addition to the 1919 tons.

The Court: He did not reject the 1919 tons. He said he rejected all of them.

Q. (By Mr. Laven): Now, Mr. Londono, do you know how many tons of wire were shipped under L. A. bill of lading 29 on the White Squall?

Mr. Bunn: If you know.

The Witness: No.

Q. (By Mr. Laven): Do you know how many tons of barbed wire were unloaded from the White Squall under bill of lading L. A. 29?

\* \* \*

The Witness: No.

Q. (By Mr. Laven): You testified that you rejected certain wire which Dulien Steel Company took. Do you know how many tons were included in that amount which you rejected?

Mr. Bunn: I don't understand the question.

The Court: He testified he rejected all [887] of it.

Q. (By Mr. Laven): How many tons of wire did you not take delivery of, that came over on the White Squall?

\* \* \*

The Witness: 81 tons and 4.9 tons.

Mr. Laven: What is that?

The Witness: In other words, 86 tons.

Mr. Laven: That is not responsive to the question. Read it again, Mr. Reporter.

\* \* \*

(Testimony of J. B. Londono.)

The Court: Do you understand the question? It is not how many did you not get delivery of, but how many did you not take delivery of?

Mr. Bunn: I renew my objection. It is still like asking him how many dollars he did not make last year.

Mr. Laven: I think it is very material. There is a serious [888] charge made here that he didn't receive 81 tons and we want to know if there were 81 tons available on that ship that came over on that ship that he refused delivery of.

The Court: Let us ask him that. Why do you not ask him if he refused delivery of 81 tons?

Q. (By Mr. Laven): Did you refuse delivery of 81 tons of wire that came over on the White Squall under bill of lading L. A. 29?

A. (Through interpreter): I didn't refuse, it was a shortage. I didn't get them.

Q. Let me ask you this question: Was there any other wire available to you other than the 1919 tons?

A. I suppose no. [889]

Q. Well, did you see any other wire, other than the 1,919 tons of wire that you received on the dock at Long Beach?

A. (Through interpreter): I didn't count the wire. I was under the impression that it was a shipment of 2,300 tons——(in English) at L. A. 29, ——(through interpreter) at L. A. 29.

Q. And of the 2,300 tons Dulien—there was available for you 2,000 tons out of a 2,300-ton shipment on the White Squall (interpreted)?

(Testimony of J. B. Londono.)

A. (Through interpreter): Yes. When Gonzales wanted to complete delivery of his wire, he could not do it, because Dulien had already removed the balance.

Mr. Bunn: May I interrupt a moment?

The Court: Did you get 2,000 tons or 1,919 tons? What was the total quantity of wire that you got (interpreted)?

The Witness: 2,000 tons, less 81 tons.

The Court: Well, you got 1,919 tons, then?

The Witness: Yes, your Honor.

The Court: That's all the wire you got?

The Witness: Yes, your Honor. [890]

\* \* \*

Mr. Laven: I think we can. I don't think the witness understands——

The Court: I think he understands, but you are trying again to get him to say a word you want him to say.

Mr. Laven: No, your Honor. I am just trying to get—I sometimes do not understand the language this witness [891] uses in response to some of the questions.

The Court: Well, the long and short of his testimony on cross and cross and cross, and now the fourth cross, is that he got 1,919 tons of wire, and no more, and no more was made available to him.

Mr. Laven: I haven't heard that testimony, your Honor, that it wasn't made available to him. That is exactly what I want to know.



(Testimony of J. B. Londono.)

The Court: If that isn't the sum and substance of six days of testimony by this witness, I don't know what it is.

Mr. Laven: I think by asking one question I can clear that up.

The Court: All right.

Q. (By Mr. Laven): Mr. Londono, you mentioned that Dulien got the rest of the wire; is that correct? A. Yes.

Q. That was sent on the White Squall?

A. Yes.

Q. Now, do you know how much wire Dulien got? A. No.

Q. Do you know whether it was more or less than 81 tons? A. No.

Q. Well, Dulien did get some of the wire that was [892] shipped on the White Squall?

A. Yes.

The Court: He just answered that.

Q. (By Mr. Laven): And that was over and above the 1,919 tons which you received delivery of?

A. Yes.

Q. Mr. Londono, when you saw the wire being unloaded off the White Squall, did you see any tags or tickets on it, that is, on the individual coils?

A. Not that I remember. [893]

\* \* \*

Q. (By Mr. Laven): Mr. Londono, do you know on what date that the demurrage charges commenced to run on the wire that was on the dock

(Testimony of J. B. Londono.)

in Long Beach?           A. No.

Q. Does not the date of August 21st refresh your recollection that that is the date that demurrage was charged for the balance of the wire that remained on the dock at that time?

A. (Through interpreter): That doesn't bring me any recollection.

Q. Did you pay any demurrage for wire that was on the dock at Long Beach?           A. I think so.

Q. Do you have those records, Mr. Londono?

A. Yes.

Q. Could you produce those tomorrow morning?

A. I know Mr. Sweeney from Mattoon & Company has the records, and he will produce, of course.

Q. Mr. Londono, directing your attention to the [894] conversation with Mr. Grinstein on, I believe, August 5, 1946, did you have any discussion with him relative to renegotiating the price of the galvanized wire?

Mr. Bunn: You mean as distinguished from the black wire?

Mr. Laven: Yes.

The Witness: Not in particular (through interpreter). Not in particular. What we talked was about, as between—the talk was regarding good wire and bad wire; was not made any separation between the galvanized and the black wire, but the letter from Mr. Grinstein is regarding black [895] wire.

(Testimony of J. B. Londono.)

April 28, 1950

Cross-Examination

(Continued)

By Mr. Laven:

Q. Mr. Londono, when was it that you first noticed the areas in which the wire was on the dock that was marked with chalk "Dulien" and another area marked "Gonzalez & Blanco" (interpreted)?

A. The first time I noticed, I don't remember. The first time I am sure I saw the chalk mark, it was on August the 5th.

Q. Now, were you down at the dock to that area where these two piles were, when you saw the chalk marks prior to August 5th (interpreted)?

A. (Through interpreter): I was on the pier before August the 5th, but I don't remember having seen the chalk marks, and probably was not around that area.

Q. Now, on August 5th, when you say that you first noticed the chalk marks and the two different piles of wire, did you observe whether or not there was any difference in the appearance of the rolls in the area marked "Dulien" and [899] in the area marked "Gonzalez & Blanco"?

A. General appearance, both piles?

Q. Yes.

A. (Through interpreter): The general appearance of both piles was similar, including the

(Testimony of J. B. Londono.)

small portions piled around the warehouse—(in English) the dock, around the dock—(through interpreter) around the dock.

Q. When you say “similar” will you kindly explain what you mean? By “similar” do you mean appearance?

A. (Through interpreter): It was not a difference perceptible to the naked eye. (In English): With the assertion that on the piles marked “Gonzales & Blanco” I saw more quantities of small coils, 28-pound coils.

Q. But was the quality of the wire in both piles the same in appearance? A. Looked the same.

Q. Now, will you tell us how they looked?

A. (Through interpreter): The same appearance I have described many times, of galvanized wire, black wire, rusty wire, and so forth.

\* \* \*

Q. (By Mr. Laven): Mr. Londono, was there any difference in the appearance of the quality of the wire in the piles or in the area marked “Gonzales & Blanco,” and in the area marked “Dulien Steel”?

A. (Through Interpreter): Not to my knowledge; not to my observation.

Mr. Bunn: Will you make your own correction there, Mr. Laven, of “Gonzales” to “Londono,” so that I don’t have to do it later in the record? You said “Mr. Gonzales” instead of “Mr. Londono.”



(Testimony of J. B. Londono.)

Mr. Laven: I mean "Mr. Londono." [901]

\* \* \*

Q. (By Mr. Laven): Mr. Londono, did you ever examine any of the wire at any time on the dock physically with your hands?

A. (Through Interpreter): Many times that I went to the dock with people, I have observed the wire and I was able to break it with my hands, and it was sort of a joke then, and a lot of people that I took there also broke the wire with their hands. [902]

\* \* \*

How many rolls did you examine on August 5th? Do you know?

The Witness: I don't know, your Honor.

The Court: Several?

The Witness: Several. [903]

Q. (By Mr. Laven): How many rolls did you examine the next time, Mr. Londono?

A. I cannot determine what day I examined and broke a piece of wire. I did it several times, and that is my recollection.

Q. On each of the times that you went down to examine this wire you had a prospective buyer with you?

A. No. I went to the pier 80 or 90 times and I did not have 80 or 90 prospects.

Q. I was referring to the times when you had prospective buyers with you. Did you show them how you could break this wire with your hands?

(Testimony of J. B. Londono.)

A. Sometimes yes, sometimes the prospect——

The Court: The prospect showed you?

The Witness: Yes.

Mr. Laven: May I have the bill of lading, please?

(The document referred to was passed to counsel.)

The Court: Are the bills of lading in evidence of his transshipment?

Mr. Bunn: Not yet, sir.

Mr. Diether: Those were all shipped to South America so they wouldn't be available, the originals. The copies might be.

The Court: Well, copies. [904]

Q. (By Mr. Laven): Mr. Londono, I show you Exhibit C-N, and ask you if in any of your conversations with Mr. Grinstein or Mr. Stanley or Mr. Dulien that you were informed as to the contents of the bill of lading, LA-29, which is Exhibit C-N? A. No.

Q. Did they in any of the conversations with you tell you whether or not the wire was being shipped by Dulien Steel Products, Inc., of California as the shipper to themselves as consignee?

A. No.

Q. Did they tell you how many rolls of wire were being shipped under the bill of lading, LA-29, Exhibit C-N? A. No.

Q. Did they tell you how many tons of wire were being shipped under LA bill of lading 29, Exhibit C-N? A. No.

(Testimony of J. B. Londono.)

Q. Then the first time that you had any knowledge of the contents of Exhibit C-N was when you saw it in Mr. Aldwell's office about a week [595] ago?

\* \* \*

A. The first time I saw this original bill of lading, it was in Mr. Bunn's office in the presence of Mr. Morrow and the other gentlemen.

The Court: Mr. Aldwell?

The Witness: Mr. Aldwell.

Q. (By Mr. Laven): Was that the first time that you first learned of the contents of the original bill of lading? A. Yes.

The Court: That is two weeks ago now. It was week ago when we started.

Mr. John Morrow: Three weeks, your [906] Honor.

\* \* \*

The Court: Do you know where C-N was issued?

The Witness: No, your Honor.

The Court: Is that not what you want to know?

Mr. Laven: Yes. [908]

\* \* \*

Mr. Bunn: Either at this time or later there should be called to the Court's attention some errors in the transcript.

\* \* \*

The Court: I suggest that it be done by a motion to correct the transcript, and where there is no dispute, it can be settled quickly, and where there is, the witness can be asked the question as to what

(Testimony of J. B. Londono.)

the testimony was intended to be, without going through the transcript and asking each question over again.

Mr. Hubert Morrow: So far as corrections of his own [914] testimony, it ought to be brought out while he is on the stand now.

Mr. Bunn: That is true.

The Court: I think he can be put back on the stand for that purpose. I don't think it need be done while he is still under cross-examination or before he is released, because obviously this is a situation that is somewhat different than the ordinary situation. It is difficult—while he does very well with his English, it is still difficult sometimes to understand precisely what he intends to say.

\* \* \*

### J. B. LONDONO

called as a witness in his own behalf, testified as follows: [915]

### Redirect Examination

By Mr. Bunn:

Q. Mr. Londono, I shall jump from one subject to another, so you will have to jump, too.

The Court: Over barbed wire?

Mr. Bunn: Yes, sir.

Q. You have been asked several questions about the markings, the chalk markings on the pier, and those questions, as I remember them, have all been tied in to language referring to two piles of wire.



(Testimony of J. B. Londono.)

Is it your testimony that on the day you first remember seeing the markings——

The Court: August 5th, he has testified.

Q. (By Mr. Bunn): ——on August 5th, all the wire that you observed on the dock was in two separate and distinct piles?

A. Two big piles, and many other small piles.

The Court: If I understand your testimony, it was then in the process of being unloaded?

The Witness: Yes, your Honor.

The Court: So there were 55,000 rolls of barbed wire, so I suppose there were a few scattered around there.

The Witness: Yes, your Honor. [916]

\* \* \*

Q. (By Mr. Bunn): Did you have any of the wire at any time actually weighed? A. No.

The Court: That is prior to its removal—the removal of the first wire.

Mr. Bunn: Yes, prior to the removal of any quantity. [917]

Mr. Diether: Is that removal——

Mr. Bunn: From the dock.

Mr. Diether: ——by Mr. Londono?

Q. (By Mr. Bunn): The question is: Did he have any of it weighed prior to its removal from the dock? A. No.

Q. I mean he himself. I don't mean Mattoon & Company or Koppel & Company. Did Mr. Londono have any of it weighed? A. No.

(Testimony of J. B. Londono.)

Q. In other words, are you able to tell us now the actual weight in tons or pounds——

A. No.

Q. ——of any of the wire except from the records that have been supplied to you? A. No.

Q. You have spoken of a shortage of 81 tons of wire. Does the shortage you refer to include or not the 4.9 tons which you have said was lost account of? A. No.

The Court: So the total shortage is 85.9 tons?

Mr. Bunn: Yes, your Honor.

Q. (By Mr. Bunn): Is that correct, Mr. Londono? A. Yes.

The Court: I have understood that, too.

Mr. Bunn: I did, too, but I want, shall I say the [918] Circuit Court to understand it.

The Court: All right.

Q. (By Mr. Bunn): Mr. Londono, three years and nine months and 16 days ago, on July 12, 1946, when you were given the samples, the cuttings of wire in Dulien's office, which are Plaintiff's Exhibit 36, et cetera, here, did you then observe any rust or brownish tinge——

The Court: Or discoloration.

Q. (By Mr. Bunn): ——or discoloration on any of those cuttings? A. No.

Q. What was the physical condition of those cuttings at that time in regard to grease?

A. (Through Interpreter): It showed fresh grease then. I don't think I used the right word. (In English): Wet.

(Testimony of J. B. Londono.)

The Court: Wet?

The Witness: Wet.

Q. (By Mr. Laven): Did you get any grease on your hands then in examining them?

A. Yes.

\* \* \*

Q. (By Mr. Bunn): In what manner did you actually handle those cuttings in your examination of them at Dulien's office on the 12th of July (interpreted). [919]

A. (Through Interpreter): I took them in my hands, I handled, I looked at them carefully and put them in a piece of paper. [920]

Q. Have you at any time since July 12, 1946, made any effort to change the condition or the appearance of any one of those cuttings?

A. No.

Q. Have you caused them to be brought into Court here as nearly as possible in the exact condition in which they were then on July 12 except for the effects of time and atmosphere?

\* \* \*

The Witness (Through Interpreter): Yes, and I haven't done anything that would have changed them. [921]

Q. (By Mr. Bunn): Have you, upon the occasion of any one of those examinations of those cuttings, to which you have testified, seen any matter drop off of any one of those cuttings?

\* \* \*

(Testimony of J. B. Londono.)

The Court: The question is whether or not he saw it.

Mr. Bunn: Yes.

The Court: When he had it in his possession. Of course I do not suppose he could see it when it was locked up in Mr. Bunn's safe.

\* \* \*

The Witness (Through Interpreter): The grease that was fresh adhered to the paper, of course.

The Court: I think counsel meant solid matter, did you not?

Mr. Bunn: As distinguished from droppings of grease, [922] does your Honor mean?

The Court: Yes.

Mr. Bunn: Yes.

The Court: Where is that one with the hair on it, it looks like?

(The exhibit referred to was passed to the Court.)

The Court: This is number what?

The Clerk: 36-1.

The Court: There is some solid matter as distinguished from grease on there.

Do you see that lump?

The Witness: Yes, your Honor.

The Court: Now your question is whether or not at the time he examined it he saw any solid matter similar to that or other solid matter drop off?

Mr. Bunn: Yes, drop off.



(Testimony of J. B. Londono.)

The Witness: No.

Q. (By Mr. Bunn): Mr. Londono, is there any difference apparent to you—withdraw that.

What difference, if any, appears to you in your examination of those cuttings in this courtroom yesterday and today from their appearance when given to you on July 12th?

A. (Through Interpreter): At the time the samples were given to me they had, of course, wet grease, fresh grease, on [923] them and I didn't observe any discoloration or any spots, rusty spots, but similar to the one that I noticed yesterday in this Court when examined meticulously.

Mr. Bunn: Will you read that answer?

The Court: He said "but similar"?

The Interpreter: Yes.

\* \* \*

Q. (By Mr. Bunn): Now you were asked how many tons of wire you yourself caused to be pickled. Did you yourself cause any of it to be pickled?

A. No.

Q. Did anybody?

A. I sold Gonzalez & Blanco 25 tons for supposed to be pickled.

Q. Who was to have it pickled?

A. Mr. Gonzalez.

Q. At whose expense? [924]

A. Yes.

Q. At whose expense?

A. (Through Interpreter): Mr. Gonzalez's.

\* \* \*

(Testimony of J. B. Londono.)

You have been in the importing business how long?      A. From 1942.

Q. Do you know in whose actual possession primarily cargo on a dock is——

\* \* \*

Q. ——when it is on such dock?

\* \* \*

The Court: Is that not a matter of which this Court can [925] take judicial notice? It is down there on the dock and they want to charge him demurrage so if it is his how are they going to charge him demurrage?

Mr. Bunn: I think your Honor's question has satisfied me.

The Court: It seems to me it is a course of business that is well known. The shipment is there and it is there in somebody's custody until it is taken from them.

\* \* \*

Q. Mr. Londono, do you know of any market which existed in Southern California at any price for that portion of the wire which was last, in the spring of 1947, shipped by you to South America from the Moore-McCormack dock?

Mr. Diether: I object to that as improper re-direct examination. [926]

The Court: Overruled.

Mr. Diether: May I be heard on that, your Honor, before he answers?

This particular wire was wire which was shown

(Testimony of J. B. Londono.)

by one of the letters which I offered for identification yesterday, as being on the dock as a result of separation from a shipment which went on the West Wind, which was in the middle of August 1946. This shipment was made in April. I think the boat actually left the dock in May of 1947. Here it remained on the dock all that time.

I wish to further object to the question on the ground it is indefinite as to what time this witness is speaking about that there was a market, when it was first separated from the shipment that was made from the West Wind in August of 1946 or after it laid on the dock for seven months in May of 1947.

Mr. Bunn: My question is clear.

Mr. John Morrow: We also add the additional objection that the word "market" is too indefinite to mean anything.

Mr. Dasteel: We object also on both grounds.

The Court: Let me hear the question.

Mr. Laven: I join in the objection.

Mr. Diether: May I join in all objections of other counsel. And it is also outside the scope of anything that was brought out by any counsel on cross-examination. [927]

The Court: The only ground I am considering is whether or not the question is indefinite. The other grounds are overruled.

Let me hear the question.

(The question referred to was read by the reporter as follows: "Q. Mr. Londono, do you

(Testimony of J. B. Londono.)

know of any market which exists in Southern California at any price for that portion of the wire which was last, in the spring of 1947, shipped by you to South America from the Moore-McCormack dock?"')

Mr. Bunn: At that time.

The Court: At what time?

Mr. Bunn: When he shipped it in the spring of 1947.

The Court: Very well.

Mr. Diether: If your Honor please—pardon me.

Mr. Dasteel: That question is so inconsistent. He asked about a market in Los Angeles for wire that was shipped to Colombia, and he doesn't say what he means by "market," market price, market value, or what. It is so indefinite and uncertain that I object to it on those grounds.

Mr. Bunn: Market value. I will add that to the question.

Mr. Diether: I further object upon the ground that at that particular time when it was shipped it is incompetent, [928] irrelevant and immaterial, upon the ground that the only time that the market would be material would be at the time it was first available to him, namely, when it was separated out.

The Court: Suppose he was under duty to mitigate his damages as much as possible. The objection is overruled.

Do you understand the question now?

The Witness: Yes, your Honor.



(Testimony of J. B. Londono.)

The Court: Very well.

The Witness: This shipment of—

The Court: No. Do you know whether or not there was any market for it?

The Witness: The only market I knew, the only market value, was for Gonzalez & Blanco, which the same day agreed to pay me no more than \$4.50 per ton of very similar wire.

Mr. Dasteel: I move that the answer be stricken on the ground that it is hearsay. He is quoting Gonzalez & Blanco.

Mr. Diether: And not responsive to the question.

The Court: Motion denied.

Q. (By Mr. Bunn): Mr. Londono, you testified the other day about a requirement, I believe, of the Republic of Colombia—on cross-examination—about the shipping of merchandise into Colombia from outside. A. Yes.

Q. What was in 1946 the requirement of you, as an [929] importer, by the Republic of Colombia, if any, in relation to the taking of money out of Colombia for the purchase of merchandise in the United States of America?

The Court: To be imported into Colombia?

Mr. Bunn: Yes, to be shipped back into Colombia.

\* \* \*

Mr. Bunn: The materiality of it is that I want to know what the relationship between any price that he may actually have received for the wire in

(Testimony of J. B. Londono.)

Colombia and the amounts shown on any export declaration from here to Colombia. [930]

\* \* \*

Mr. Bunn: What I propose to show is that when a Colombian importer causes money to go out of Colombia into the United States of America——

The Witness: Or any other country in the world.

The Court: Just a moment.

Mr. Bunn: ——for the purpose of merchandise in the United States to be shipped from the United States to Colombia, that on the shipment of that merchandise into Colombia there must appear on the documents required by the government the amount of money which went out of Colombia for the purchase of the merchandise.

The Court: How is that material?

Mr. Bunn: In other words, I propose to show that the Republic of Colombia is not willing for a Colombian importer to take out \$160,000 for the purchase of rotten onions and send back rotten onions there without showing what he paid [931] for it.

\* \* \*

The Court: What has that to do with the damages which you claim?

Mr Bunn: It has nothing to do with the damages whatsoever, but I want to forestall the continuation, as was started yesterday on the cross-examination, of an effort on the part of the opponents to show that Mr. Londono reported to the Colombian gov-

(Testimony of J. B. Londono.)

ernment on the shipping documents for the merchandise to go back into Colombia a larger sum of money than Mr. Echavarria paid him for the [932] wire.

The Court: You mean on his export declaration?

Mr. Bunn: Yes, sir.

The Court: His United States export declarations?

Mr. Bunn: Yes, sir.

\* \* \*

The Court: I still don't see how it is material. All that would do would be to go to the weight of his testimony.

Mr. Bunn: With the conversation here I have accomplished my purpose. I have brought to counsel's attention and to the attention of the Court what I propose to prove by this witness, so that there can be no misunderstanding from now on on that thing.

The Court: All right. Ask your question over again, now.

Q. (By Mr. Bunn): Mr. Londono, what is the requirement, if any, which the Colombian Government makes of you as an importer as to the showing or not showing on documents accompanying merchandise into Colombia from this country as to how much money has been spent in the United States for that merchandise? [933]

\* \* \*

(Testimony of J. B. Londono.)

The Court: How much was spent in Colombia, or how much was spent in the United States?

The long and short of it is you want to know whether or not he is required to put in the amount of money he spent for merchandise on documents, to the Republic of Colombia, when it is shipped back there.

Mr. Bunn: Yes, sir, that is what I want.

\* \* \*

Mr. John Morrow: At least, it should be limited to what was required in this particular instance.

The Court: Yes.

Mr. Bunn: Yes, I will limit it.

\* \* \*

Mr. Dasteel: Just a moment. May all the previous statements of counsel be stricken from the record?

The Court: The last question has been withdrawn. The previous statements of counsel may not be stricken. They are [934] just explanatory of what he is trying to get at. [935]

\* \* \*

The Court: C-T, for identification, export declaration on the 2825 rolls.

(The document referred to was marked Defendants' Exhibit C-T, for identification.) [937]

\* \* \*

The Court: What do you propose to ask the witness about this export declaration? Column 7



(Testimony of J. B. Londono.)

has a place for the number, amount, net commodity number, "G" for General License.

Mr. Bunn: Since he has been asked about this document by Mr. Diether, I want him to explain or I want at least to read into the record the printed heading of the column at the extreme right over the dollar figure there.

\* \* \*

Mr. Diether: The only materiality it would have would be to show on July 31st that his agent had this export declaration prepared for shipment of wire to Colombia. In other words, it shows the intention to immediately take [938] possession of that quantity of wire and ship it to South America.

Mr. Bunn: And that is all you wanted it mentioned for yesterday?

Mr. Diether: That is all, and the date that is mentioned on it.

Mr. Bunn: Then that is all I care to pursue the matter, on that statement of counsel.

\* \* \*

The Court: It is admitted.

Mr. Diether: I offer it for the purpose stated. May it be received for the purposes for which I stated?

Mr. Bunn: Well, it is received or not, isn't it?

The Court: It is received in evidence for all purposes, if any. [939]

(The document, heretofore marked Defendants' Exhibit C-T, for identification, was received in evidence.)

(Testimony of J. B. Londono.)

Mr. Bunn: Now, may I see it, please. Now that it is in evidence, may the record show that under the column numbered 7 at the extreme right appears the following printed language, and I want it read in here.

Mr. Dasteel: You might as well put the date in, too, Mr. Bunn.

Mr. Bunn: It is very short. The date is July 31, 1946, but that is typewritten. The following printed language——

The Court: In column 7. You haven't identified that yet.

Mr. Bunn: Sorry. I said it first. Under column 7 at the extreme right:

“Value at time and place of export (selling price, or cost if not sold, including inland freight, insurance and other charges to place of export).”

And under that the figure, “\$13,582.00.” [940]

\* \* \*

JAMES E. SWEENEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

\* \* \*

Direct Examination

By Mr. Bunn:

Q. Mr. Sweeney——

Mr. Laven: Just a moment, counsel, before we proceed. We haven't any understanding as to a further daily copy, and I think we should decide that before the reporter goes ahead.

Mr. Diether: We decided that there would be no more daily.

The Court: There is to be no further daily?

Mr. Bunn: That is my understanding.

The Court: Unless you change your minds.

Very well.

Q. (By Mr. Bunn): Mr. Sweeney, first I must admonish you that you will have to make an extra effort to be heard in this room, as though I were standing back in that corner and you were talking primarily to me. You will have to be conscious of it [947] all the time or your voice will fall into the depths.

What is your business now, sir?

A. Foreign freight forwarding.

Q. Mr. Morrow says he can't hear you.

A. Foreign freight forwarding.

Q. Where is your office?

A. 124 West Fourth Street.

(Testimony of James E. Sweeney.)

Q. In Los Angeles?           A. Los Angeles.

Q. What was your business in the year 1946?

A. The same. I was manager of the same type of business, and the company was Mattoon & Company.

Q. And now you are in business for yourself, or for somebody else?

A. It is my own business now.

The Court: How long were you with Mattoon & Company? Were you with Mattoon & Company up until—what was the last transaction here?

The Witness: I was with them for five years and left them in April of 1947.

Q. (By Mr. Bunn): Permanently?

A. Permanently.

Q. When did you first become acquainted with the plaintiff, J. B. Londono? [948]

A. Early in 1946, when he had the barbed wire transaction that was supplied from Fontana.

Mr. Diether: From Montana?

The Witness: Fontana.

Q. (By Mr. Bunn): Did you have any contact with Mr. Londono in connection with barbed wire shipped by Dulien to Los Angeles County?

Mr. Diether: When?

Mr. Bunn: Did he have any?

The Witness: The first contact I had with Mr. Londono in that was when he advised of—

Mr. Diether: Just a moment. I object to the witness volunteering. He isn't answering the question.



(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): When did you have contact with Mr. Londono in connection with barbed wire shipped by Dulien to Los Angeles County?

A. Yes.

Q. When did you first have such contact?

A. Sometime in July, 1946. [949]

\* \* \*

The Court: There was only one Mr. Sweeney with Mattoon & Company during the time that you were there?

The Witness: Yes.

The Court: And that was you?

The Witness: Yes.

Q. (By Mr. Bunn): What was your position in the office of Mattoon & Company?

\* \* \*

The Witness: I was manager.

Q. (By Mr. Bunn): Does Mattoon & Company have more than one office? A. Yes.

Q. How many offices do they have? [950]

A. Three.

Q. Where?

A. Los Angeles, New Orleans and San Francisco.

Q. You were manager of what office, if any one only? A. Los Angeles. [951]

\* \* \*

Q. (By Mr. Bunn): Did you have any conversation with Mr. Londono prior to July 29th about what we call the Dulien wire? A. Yes.

(Testimony of James E. Sweeney.)

Q. When did that conversation take place?

A. I don't remember the day.

Q. Do you remember approximately how long before July 29th it was?

A. It was approximately two weeks.

Q. Was there anybody else present at that conversation?

A. None that I remember.

Q. What was said?

The Court: Where was it?

Q. (By Mr. Bunn): Where did it take place?

A. At Mattoon's office.

Q. What was said?

A. It concerned mostly the tentative plans of shipping. In other words, what port in Colombia the freight was going [952] to and how much and just the ordinary details of the shipping.

The Court: What was said, in substance?

Q. (By Mr. Bunn): What did Mr. Londono say?

A. Well, so much of the tonnage of the 2000 tons was to go to Cartagena, Colombia, and so much was to go to Buenaventura, Colombia, and so far as the final details of documents, etc., we didn't discuss that because we didn't know the exact consignees, etc. [953]

\* \* \*

The Court: Do you remember the precise number of tons mentioned in that conversation?

The Witness: No.

Q. (By Mr. Bunn): Were you given any specific tonnage instructions in that first conversation?

(Testimony of James E. Sweeney.)

A. No, other than a larger portion was to go to Buenaventura than to Cartagena.

Q. Did you have a conversation with Mr. Londono on Friday, July 26, 1946, that you remember?

A. I am sure I did, and it had mostly to do with going to the dock. [954]

\* \* \*

Q. Where was it? A. In Mattoon's office.

Q. (By Mr. Bunn): Do you remember what was said?

The Court: In substance.

The Witness: In substance, it was a matter of finding out—— [955]

Q. (By Mr. Bunn): You have to say, "somebody said" or we will have two more pages of objections here.

The Witness: We wanted to see the wire or wanted to check the arrival of the ship——

Mr. Diether: Who did?

Q. (By Mr. Bunn): You have to start every sentence with "he said" or "I said."

The Court: If you can remember, in substance

The Witness: Well, let's put it this way: He said that he wanted to check the ship's arrival, and we wanted to see the freight, of course, and we agreed tentatively on a time to go down there, and I also agreed with him to check the arrival so that we could go down at the right time.

The Court: Did anybody mention the name of the ship?

(Testimony of James E. Sweeney.)

The Witness: We knew the name of the ship. The name of it was passed back and forth any number of times.

Q. (By Mr. Bunn): What was the name of the ship?      A. White Squall. [956]

\* \* \*

Q. Do you know whether or not you saw Mr. Londono on July 29, 1946?

A. No, I didn't see him.

Q. You mean you did not see him or you don't remember if you saw him?

A. I don't remember that I saw him.

Q. Did you on July 29, 1946, have any contact with or communication from the Citizens National Trust & Savings Bank regarding what we call the Dulien Wire?      A. Yes.

Q. Where were you?      A. In my office.

Q. What contact did you have or communication received?

A. Well, the bank sent by messenger the release for the merchandise along with a letter of instructions which we had to acknowledge receipt of on the duplicate.

Q. Now do you have—and when I say “do you have” I include your personal possession or Mattoon's files which have been brought into court here, or Mattoon's office——

Mr. Diether: How could this witness possibly say what Mattoon had?

The Court: Did you retain that letter of in-



(Testimony of James E. Sweeney.)

structions with its accompanying document or documents, if any? [957]

The Witness: I did that day.

The Court: Do you continue to retain them?

The Witness: No.

The Court: What happened?

Q. (By Mr. Bunn): What did you do with it or them?

A. They were returned to the bank at their request on the 31st.

Q. How did you happen to return them to the bank? Did anything happen on the 29th which caused you to return them to the bank?

A. No, nothing.

The Court: Do you remember what documents accompanied that letter?

The Witness: Well, just the one release which indicated the freight was paid and we could go to work on the merchandise.

The Court: Was there a bill of lading accompanying that letter? [958]

\* \* \*

The Witness: No.

Mr. Diether: If he knows.

Mr. O'Malley: I think that that qualification should be made.

The Court: He said no.

\* \* \*

The Court: The witness said no, there was no bill of lading accompanying the letter.

(Testimony of James E. Sweeney.)

Mr. O'Malley: If your Honor please, I would like for the [959] record to have that question framed, a preliminary question as to his knowledge.

The Court: He is testifying as to his knowledge.

Mr. O'Malley: I think, your Honor, your further interrogation might indicate that he is testifying to his own present conclusion rather than to his knowledge.

The Court: He is sworn to testify to the truth. I will treat your objection as a motion to strike and deny it.

Mr. O'Malley: Thank you, your Honor.

Q. (By Mr. Bunn): Mr. Sweeney, what was the document which you received on the 29th from the Citizens Bank?

The Court: Accompanying the letter.

Mr. Bunn: Accompanying the letter.

Mr. O'Malley: If he knows.

The Court: If he knows. [960]

\* \* \*

The Witness: It was a freight bill.

The Court: His answer was, it was a freight bill.

\* \* \*

Q. Mr. Sweeney, I show you Plaintiff's Exhibit No. 7, which is entitled "Original Freight Bill," and ask you if you ever saw that document before?

A. (Examining document) Yes.

Q. Is that the document you received on the 29th of July?

The Court: Accompanying the letter?

(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. Bunn): Is there anything now on the face of that document which was not on the face of it when you received it on the [961] 29th, other than the blue penciled No. 7 in the upper right-hand corner and the purple ink notation, "Plaintiff's 1, P. S. Noon," in the center of it?

A. There is no additions that I recall.

Q. What about the telephone numbers apparently on there? A. I don't remember.

Q. Was the stamp "Matson Navigation Company, Paid" on that? A. Yes.

The Court: What date does that say?

The Witness: The 29th.

Q. (By Mr. Bunn): Was the blue pencil initialing in the center of the page stamped on there? A. Yes.

Q. Was the other stamp, which is now on the left-hand side of the document, reading "Payment Received, Check 2529962," on there? A. Yes.

Q. Was there then on the back of that document, the reverse side of which I now show you, any of the writing, the typewriting or pen writing, which now appears on the back of it?

A. No. [962]

Q. Now you received that on the 29th with a letter from the bank? A. That is right.

Q. How long did you retain that document?

Mr. Diether: After he received it on the 29th?

Mr. Bunn: He couldn't have retained it before he received it.

(Testimony of James E. Sweeney.)

Mr. Diether: That is the time you are speaking about?

Mr. Bunn: Yes.

The Witness: From the 29th I kept it until it was returned to the bank by me on the 31st.

Q. (By Mr. Bunn): When you returned that document to the bank on the 31st what, if anything, did you do with the letter which had accompanied that document?

A. Why, I returned the letter and the freight bill to either Mr. Schroeder or Mr. Powers, I don't recall. Both were there.

Q. Had you, between the time you received the letter and the freight bill on the 29th, and the time you returned them to the bank on the 31st, received any verbal or written communication in addition thereto from the bank?

A. Both Mr. Powers and Mr. Schroeder had called me on it.

Q. Called you on the telephone? [963]

A. On the phone, yes.

The Court: One moment. When you received the letter on the 29th from the bank, was that the only document which accompanied the letter?

The Witness: Yes.

Q. (By Mr. Bunn): Did either of those telephone calls come to you on the 29th, Monday?

A. No. [964]

\* \* \*

Q. Did either of those calls come to you on Tuesday, July 30?            A. Yes.



(Testimony of James E. Sweeney.)

Q. Did both of them come to you that day?

A. My recollection is—it could have been one call—first Mr. Powers and then Mr. Schroeder on the same call.

Q. But you talked to both gentlemen?

A. Yes.

Q. On Tuesday?                      A. Yes.

Q. Had you dealt with the foreign department of the Citizens Bank before that? [965]

A. Yes.

Q. Were you personally acquainted with Mr. Schroeder before that?                      A. Yes.

Q. With Mr. Powers before that?                      A. Yes.

Q. Did you know the voice of each of them?

A. Yes.

Q. Now tell us what was said by you and what was said by each of them successively in those telephone conversations?

\* \* \*

A. The phone call starts with Mr. Powers' request that the document and the letter be returned, and Mr. Schroeder also requested it in order to reissue the instructions to more completely protect the bank's position.

Q. You mean that is what he told you?

A. In substance, yes. [966]

Mr. Diether: By "document" is the witness referring to Plaintiff's Exhibit 7 and the letter accompanying it?

Mr. Bunn: So he said.

(Testimony of James E. Sweeney.)

Q. Did you not? A. Yes.

Q. Did you in whole or in part or at all comply with that request on Tuesday, July 30?

\* \* \*

The Witness: No. [967]

Q. (By Mr. Bunn): What did you say, if anything, in telephone response to Mr. Schroeder's request?

A. The call came in the afternoon. I was busy, too busy to take care of the matter, and said I would come over first thing in the morning, which I did, the following morning.

The Court: Did you take the documents with you then?

The Witness: Yes.

The Court: That is to say, the letter and the freight bill?

The Witness: The letter and the freight bill.

Q. (By Mr. Bunn): Did you go alone to the bank? A. No.

Q. Who was with you? A. Mr. Londono.

Q. About what time was it when you went into the bank?

A. Approximately 10:30 or 11:00 in the morning.

Q. To what location in the bank did you go?

A. To the foreign department.

Q. With whom, if anybody, did you talk?

A. Mr. Schroeder and Mr. Powers.

Q. Both? A. Yes. [968]

Q. Was Mr. Londono in your presence at the

(Testimony of James E. Sweeney.)

conversation with Mr. Schroeder?

A. Yes.

Q. Was there any other person there within the range of hearing?

A. Well, possibly Mr. Powers. The documents were handed over——

\* \* \*

Q. Who handed the documents to whom in the bank on that occasion?

A. I handed the documents to either Mr. Powers or Mr. Schroeder, I don't remember which.

The Court: Did you say anything when you handed them to them?

The Witness: Just "These are the papers you requested, [969] and here they are."

Q. (By Mr. Bunn): Did the person to whom you then handed the documents, whether Mr. Schroeder or Mr. Powers, make any response that you now remember?

A. Well, nothing other than that they acknowledged that they had them.

\* \* \*

Q. Did he say anything about what he intended to do with the documents, or either of them? [970]

\* \* \*

The Witness: No.

Q. (By Mr. Bunn): Did you see him do anything with either of said documents? A. No.

Q. Did he leave your presence? A. Yes.

The Court: Who?

(Testimony of James E. Sweeney.)

Mr. Bunn: The gentleman to whom he handed the documents.

The Court: Did he leave his presence with the documents? [971]

The Witness: Can I explain it?

The Court: I think he can. Tell us what happened.

The Witness: Obviously Mr. Powers had to take care of the mechanics of it, so he took the documents and went into some other part of the department to do what they wanted to do.

Q. (By Mr. Bunn): Was that letter ever again returned to you? A. No.

Q. Do you know what became of that letter?

A. No.

Q. Was the freight bill ever again returned to you? A. Yes.

Q. When?

A. Later in the note department.

Q. On the same day? A. Yes, same day.

Q. Was anybody present with you when it was returned to you in the note department?

A. Mr. Londono and Mr. Schroeder.

The Court: Have you finished your conversation with Mr. Schroeder and Mr. Powers when you first brought the letter and the document back?

The Witness: Yes, that portion.

The Court: Did they say anything to you, did they say [972] "Just wait here" or "Come back tomorrow" or "Go downstairs"?

The Witness: No. The whole matter was co-



(Testimony of James E. Sweeney.)

incidental with some arrangements Mr. Londono had with the bank, which were no business of mine, but we had to go together after we left to the dock so I stayed until the letters were dictated and written and transmitted and I signed for the return.

\* \* \*

The Court: How long did you stay up in the foreign department?

The Witness: Well, we probably spent a half or three-quarters of an hour there, and probably another hour downstairs in the note department.

The Court: Was there conversation back and forth between you and Powers and Schroeder and Londono?

The Witness: Well, most of the conversation was between Mr. Schroeder and Mr. Londono regarding the financial arrangements on the shipment. [973]

\* \* \*

Q. All right. You said that the freight bill was handed back to you in the note department.

A. That is right.

Q. On the same visit by you to the bank?

A. Yes.

Q. Who handed it to you?

A. Mr. Schroeder.

Q. Did he at the same time hand you anything else?

A. Well, the letter giving the shipping instructions for which I signed.

The Court: Did he hand you any other docu-

(Testimony of James E. Sweeney.)

ments at that time besides the letter and the freight bill?

The Witness: No.

Mr. Bunn: May I have Exhibit No. 20 and the other documents, please?

(The exhibits referred to were passed to counsel.)

Q. (By Mr. Bunn): Mr. Sweeney, was the letter which Mr. Schroeder handed you with the freight bill in the note department on the 31st the same letter which you had received from the bank on the 29th and returned by your hand to the bank on the 31st? A. No.

Q. I show you Defendant Bank's Exhibit [974] D—

Mr. Diether: For identification.

Q. (By Mr. Bunn): —for identification, it being on the letterhead of the Citizens National Bank and bearing date of July 29, 1946, and ask you to read the letter and tell whether you have ever seen that letter before or not.

A. (Examining exhibit.)

The Court: I think in fairness to the witness you might show him the carbon copy. His testimony was to the effect that he had signed it.

Mr. Bunn: Yes.

Q. I show you at the same time Defendant Bank's Exhibit C-D-1—is that in evidence or for identification—for identification, and you may compare them.

(Testimony of James E. Sweeney.)

A. (Examining exhibit): Yes, I have seen them.

The Court: And your question is whether or not he has ever seen that letter before?

Mr. Bunn: Yes, your Honor.

The Court: And when he first saw it?

Mr. Bunn: Yes.

The Court: When did you first see it?

The Witness: I have seen the letter.

Q. (By Mr. Bunn): When did you first see the original of that letter?

The Court: And the carbon. [975]

Q. (By Mr. Bunn): And the carbon.

A. I don't remember the date.

Q. Did you ever see that original or that carbon on the 29th day of July 1946? A. No.

Q. Did you see either of them on the 30th day of July, 1946? A. No.

The Court: Look at it. Is that your signature on the carbon copy?

The Witness: Yes.

The Court: Is it dated?

The Witness: Yes.

The Court: Does that refresh your recollection as to when you first saw it?

Q. (By Mr. Bunn): Is the receipt dated?

A. No, the receipt is not dated on the receipt that I got.

Q. Do you know how you received that letter, that is, whether by hand or by mail—I will withdraw that question.

(Testimony of James E. Sweeney.)

Do you know the circumstances under which you received the original as distinguished from the carbon?      A. I don't remember. [976]

Q. Do you know where you were when you signed the receipt which is on the carbon?

A. In Mattoon's office.

Q. How do you know that?

A. By the stamp. I wouldn't carry it. It is an office stamp.

Q. And you do not know what date you received it?      A. No, I don't.

Q. Nor what date you put that stamped receipt on it?      A. No.

The Court: Let me see those and see if I have it clear in my mind.

(The exhibits referred to were passed to the Court.)

Mr. Bunn: Can anybody tell me the number of the one which has Mr. Sweeney's pen signature on it?

The Court: I thought that was the one that he had.

Mr. Bunn: That is the original and the copy that the bank had of another letter.

Mr. Diether: Mr. Bunn, I think you should state for the record where you received this original letter, Exhibit C-D.

Mr. Bunn: I will ask him.

Mr. Diether: Just a moment.

Let me state that during the course of the preparation for trial we examined Mattoon & Company's



(Testimony of James E. Sweeney.)

file and this letter of July 29, 1946, was not [977] in it.

During the course of the trial here I asked Mr. Bunn if he knew where that letter was, and he produced it from his file and handed it to me in the courtroom.

Mr. Bunn: And had shown it to you in your office before.

Mr. Diether: I never had seen it before, the original.

Mr. Bunn: It was Mr. O'Malley that checked the documents with me in your office before.

Q. I will ask you, Mr. Sweeney, do you know where this letter, C-D, reposed after it first came into your possession?

The Court: What was the verb?

Mr. Bunn: Reposed.

Mr. Diether: He couldn't tell us because he said he doesn't remember when he received it.

Mr. Bunn: That means he doesn't remember the date he received it. It doesn't mean he doesn't remember receiving it.

Q. Did you receive it?

A. Yes, it was in the Mattoon file along with the transaction.

Q. Until when?

Mr. Diether: Just a moment. I think we should know, your Honor, when he first saw it.

The Court: You asked counsel to find out where the letter came from, and that is what he is doing.

Mr. Diether: Very well.

(Testimony of James E. Sweeney.)

The Witness: What is the question? [978]

The Court: How long was it in Mattoon's file?

The Witness: I don't know.

Q. (By Mr. Bunn): Do you know the occasion of its being withdrawn from Mattoon's file?

A. The occasion was Mr. Londono was checking it over with me and took it.

Q. In what year? A. 1946.

Q. Do you know what Mr. Londono did with it—withdraw that.

Where did you next see it? Did you see it in my office in the meantime? A. I might have.

Q. Do you remember?

A. I can possibly remember. [979]

\* \* \*

### Direct Examination

(Continued)

By Mr. Bunn:

Q. Now, Mr. Sweeney, did you while in the bank on Wednesday, July 31, receive any letter by hand from Mr. Schroeder or Mr. Powers? A. Yes.

Q. I show you Exhibit C-E, which purports to be an original typing, dated July 31 and ask you if you have seen that document before.

A. That is the letter I received then.

Q. From whose hand did you receive it?

A. Mr. Schroeder.

Q. In what part of the bank were you then?

A. In the note department.

Q. Did you at that time, or on the same occa-

(Testimony of James E. Sweeney.)

sion while in the bank, receive a carbon copy of that letter?

A. I was requested to sign the carbon copy as an [908] acknowledgment of receipt of the original.

Q. And did you? A. Yes.

Q. I show you Exhibit C-E-1, purporting to be a carbon copy of a letter dated July 31, 1946, and ask you if you have seen that document before.

A. Yes.

Q. What is that?

A. That is the acknowledgement copy that I signed.

Q. And that is your signature in pen there?

A. Yes.

Q. And that bears what date? A. July 31.

Q. And the receipt form? A. July 31.

Q. And is the date of July 31 in the lower left-hand portion of the document in your handwriting?

A. Yes.

Q. And the signature Mattoon & Company?

A. Yes.

Q. J. E. Sweeney, in your handwriting?

A. Yes.

Q. And what did you then do with that document after you had signed it?

The Court: You mean C-E-1? [981]

Mr. Bunn: C-E-1.

The Witness: I handed it back to Mr. Schroeder.

The Court: Did you keep C-E?

The Witness: Yes.

The Court: Were any other documents handed

(Testimony of James E. Sweeney.)

to you at that time with it?

The Witness: Yes, the freight bill.

The Court: What?

The Witness: The freight bill.

The Court: Anything else?

The Witness: No.

The Court: Was a bill of lading handed to you at that time with that document?

The Witness: No.

The Court: Was a bill of lading ever handed to you by the Citizens National Bank relating to this wire?

The Witness: No.

The Court: Did a bill of lading ever come into your possession relating to this wire?

The Witness: No.

Mr. Bunn: May I see the original bill of lading, please. That is No.—

The Court: C-N.

(The document referred to was passed to counsel.) [982]

Q. (By Mr. Bunn): I show you Exhibit C-N, a bill of lading, and ask you if you have ever before now seen that document.

A. I saw it in your office.

Q. When? A. Two days ago.

Q. Two days ago? A. Yes.

Q. During the course of this trial?

A. Yes.

Q. Who showed it to you? A. You did.



(Testimony of James E. Sweeney.)

Q. Who else was in the office?

A. This gentleman (indicating).

Q. Mr. John Morrow?

A. Mr. Morrow. And this gentleman (indicating).

Q. Mr. Hetherington?

A. Mr. Hetherington, yes.

Q. That was this week?           A. Yes.

Mr. Bunn: Now, if your Honor please, I will offer Exhibit C-E in evidence. I don't think it is in evidence yet.

The Court: No, it is marked for identification. C-E will be received in evidence as Plaintiff's Exhibit 38. Would that be the next number, Mr. Clerk? [983]

The Clerk: Yes, your Honor.

The Court: And C-E-1?

Mr. Bunn: And C-E-1, your Honor.

The Court: They will be in evidence as Plaintiff's Exhibits 38 and 38-A.

Q. (By Mr. Bunn): Now, Mr. Sweeney, you now remember receiving——

The Court: Just a moment. The clerk calls my attention to the fact that the carbon copy is already marked 16 for identification. Therefore it can go in without so much confusion if the copy, that is, C-E-1, goes in as 16 and the original as 16-A.

(The documents referred to, previously marked for identification, were received in evidence as Plaintiff's Exhibits Nos. 16 and 16-A.)

(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, when there was handed back to you by Mr. Schroeder at that same meeting in the bank of July 31 the freight bill, as you have just before noon testified did occur, did any conversation ensue between you and Mr. Schroeder or in your presence between Mr. Schroeder and any other person regarding that freight bill? A. Yes.

Q. There did occur a conversation?

A. Yes.

Q. Who was present? [984]

A. He and I and Mr. Londono.

Q. What was said, and begin each sentence with "He said" or "I said."

The Court: When was this again?

Mr. Bunn: At the same time.

The Court: In the note department?

Mr. Bunn: Yes, your Honor.

The Court: Very well.

The Witness: Mr. Schroeder instructed me to go—Mr. Londono and I were going to the harbor and his instructions were to go to Dulien Steel and have the back of the freight bill endorsed, which we did later in the day.

\* \* \*

Q. (By Mr. Bunn): Do you now remember whether or not at that same meeting in the bank you received from Mr. Schroeder any other writings than you have testified to? A. No. [985]

Q. You mean you don't recall or you didn't receive any? A. I didn't receive any.

(Testimony of James E. Sweeney.)

Q. What did you do then?

A. We left the bank again and proceeded to Dulien Steel.

Q. You and Mr. Londono? A. Yes.

Q. Anybody else with you?

A. No—Mr. Rendon in addition.

Q. Did you stop anywhere on the way to Dulien's?

A. Not after we left downtown Los Angeles.

Q. Whom did you meet, if anyone, at Dulien's?

A. Mr. Grinstein and Mr. Stanley.

Q. Was Mr. Dulien himself present?

A. No.

Q. Did you have any conversation then with either of those gentlemen? Answer yes or no.

A. Yes.

Q. With which one?

A. Mr. Grinstein and Mr. Stanley.

Q. Together or separately? A. Together.

Q. Was any other person than you and Mr. Londono, Mr. Rendon and those two gentlemen present? A. No. [986]

Q. Will you tell what conversation then and there ensued, beginning each sentence with "He said" and "I said," please.

A. I presented the freight bill to him and explained that it was necessary that we have the endorsement, which they were willing to do, and did.

Q. What did you observe thereafter being done with or about that paper, being the freight bill?

(Testimony of James E. Sweeney.)

A. Mr. Stanley put it in the typewriter and typed in the endorsement and signed it.

Mr. Dasteel: May I ask the date that this took place?

The Court: July 31, according to the evidence.

Mr. Dasteel: July 31?

The Witness: Yes.

Q. (By Mr. Bunn): Now I call your attention to the red typewriting and a purported signature thereunder on the back of Plaintiff's Exhibit No. 7, and ask you if that is the endorsement that was then and there put on the document.

A. (Examining document): Yes.

Q. Did you see the signature affixed thereto?

A. Yes, I did.

Q. Is that the signature of Mr. L. P. Stanley?

A. Yes.

Q. As you saw it put on the document? [987]

A. Yes.

Mr. Hubert Morrow: For the record, that is Exhibit 17?

The Court: Exhibit 7.

Q. (By Mr. Bunn): Then what was done with the document after Mr. Stanley signed it?

A. It was returned to me.

Q. What did you do with it?

A. I returned to Matson's office with it.

Q. Were you accompanied by Mr. Londono?

A. Mr. Londono, yes.



(Testimony of James E. Sweeney.)

Q. Do you know what thereafter became of that freight bill?

A. It was placed in the file that had to do with the transaction.

Q. In the file at Mattoon's office? A. Yes.

Q. Was that file open or not open to Mr. Londono? A. It was open.

Q. With or without specific permission from anybody in Mattoon's office?

A. He didn't need specific permission.

The Court: Did you go to the dock that day with Mr. Londono?

The Witness: Yes. [988]

The Court: Before you came back to Mattoon?

The Witness: Yes.

The Court: From Dulien?

The Witness: Yes.

Q. (By Mr. Bunn): That trip to the dock from Dulien's, were there in that party just you—who was in that party?

A. Mr. Rendon, Mr. Londono and myself.

Q. Do you remember approximately what time you reached the dock?

A. About 3:00, 3:30 in the afternoon.

Q. What did you observe at the dock?

Mr. Diether: Which dock?

The Court: Which dock now?

The Witness: Pier A, Long Beach.

Q. (By Mr. Bunn): What did you observe at the dock?

A. The discharging of the wire and the first

(Testimony of James E. Sweeney.)

loading of the merchandise that was moving, or the barbed wire that was moving to the Moore-McCormack.

Q. Generally speaking, what quantity of wire did you observe on the dock?

A. There might possibly have been around 500 to 700 tons.

The Court: Was the ship in process of being unloaded? [989]

The Witness: It was discharging.

The Court: It was discharging?

The Witness: Yes.

Q. (By Mr. Bunn): Was there any difference in the appearance of the quantity of piles of wire that you then and there saw, each from the other?

Mr. Dasteel: Just a moment, if your Honor please. I would like to have that question clarified. Does counsel mean, was one pile of wire larger than another, or was he asking about the condition?

The Court: Was there more than one pile?

The Witness: Yes, there were two separations.

The Court: Was one pile bigger than the other?

The Witness: My recollection is that one was.

The Court: Were they identified?

The Witness: Yes.

The Court: How were they identified?

The Witness: By the marks on the dock that were made with chalk, one for Gonzalez & Blanco and one for Dulien Steel.

Q. (By Mr. Bunn): Did you observe any differ-

(Testimony of James E. Sweeney.)

ences in the general appearance of the wire in those two piles? [990]

\* \* \*

The Witness: Not at that time.

Q. (By Mr. Bunn): Did you go to the Moore-McCormack pier that day? A. Yes.

Q. Did both the gentlemen last named accompany you? A. Yes.

Q. Did you see any barbed wire at the Moore-McCormack pier? A. Yes.

Q. What did you observe there?

A. The poor condition.

Q. Regarding barbed wire?

A. The poor condition of the wire.

Q. Where did you see the wire there, that is, in an [991] open space on something, or piled up, or how?

A. It was taken inside the shed and piled up on pallet boards in there and there were some rigs outside waiting to unload.

Q. In other words, there were some rigs outside with wire on them? A. Yes.

Q. What was the general appearance of the wire which you saw there then?

A. None of it was good.

Mr. Diether: Which wire, the outside or inside?

The Witness: Both.

Mr. Diether: I object to the question as being indefinite.

Mr. Bunn: All right. I will take the time to do it over.

(Testimony of James E. Sweeney.)

The Court: Objection overruled.

Mr. Bunn: You may answer.

The Court: He has answered it. He said both of them were in poor condition.

Q. (By Mr. Bunn): Was there any conversation then and there? A. Yes.

Q. Between any of the three of you about the wire?

A. Mr. Londono didn't want to ship it. [992]

Q. Say what was said, please.

A. Mr. Londono did not want to ship it.

The Court: What did he say?

The Witness: He said the condition is too bad to send it to his Colombian buyers.

Mr. Hubert Morrow: Your Honor, may I interrupt? I am sorry. I may have misunderstood the witness' last answer about it being on the Moore-McCormack dock and its appearance. I thought he said it was good. Am I mistaken?

The Witness: I said not good.

The Court: He said not good. He first said it was poor, then he said it was not good. ?

Mr. Hubert Morrow: I beg your Honor's pardon. I didn't catch it. Would you speak a little louder, please?

The Court: What do you mean by "not good"?

Mr. Dasteel: I move that the witness' answer be stricken on the grounds that he is not qualified as an expert and not in a position to make any definite statement as to the condition of wire, good, bad or indifferent.



(Testimony of James E. Sweeney.)

The Court: Motion denied.

What do you mean, not good?

The Witness: Well, I should have stuck to the first word. It was in poor condition.

The Court: What do you mean, poor?

The Witness: Rusted, and some of the galvanized wasn't [993] identifiable as galvanized, some of the black wasn't identifiable as black, and there was mud on some of the rolls and generally poor condition.

Q. (By Mr. Bunn): Did that condition exist to the same extent in the wire you saw on the rigs outside? A. Yes.

Q. And the wire you saw in the shed?

A. Yes.

Q. Did you then and there do anything yourself about any of that wire?

A. Mr. Londono indicated he didn't want it shipped, so I sent the loaded trucks back to Pier A to set it back on the dock.

Q. That is what you refer to as rigs?

A. Yes.

Q. Did they begin moving while you were there?

A. I didn't see them.

Q. Then what did you and Mr. Londono do and Mr. Rendon? A. Returned to Los Angeles.

Q. Where did you go?

A. Back to Mattoon's office.

Q. Did Mr. Londono go with you or not?

A. I don't remember.

Q. Now was anything done by you on August 1st

(Testimony of James E. Sweeney.)

in regard [994] to this barbed wire, I mean any of it now?

A. Well, on August 1st Mr. Londono, having seen the Moore-McCormack portion and what we had seen in Long Beach that was discharged, and we weren't certain at Long Beach just how much of it, despite the segregation on the dock, was going to go to Mr. Londono or what was going to go to Gonzalez & Blanco, so August 1st would be a day of confusion because we wouldn't be able to take any further action as far as shipping to Colombia is concerned.

Mr. Diether: Just a moment.

The Court: The answer is that you did not do anything on August 1st, or do you remember?

The Witness: I remember that on August 1st Mr. Londono decided to segregate.

The Court: Did he instruct you?

The Witness: Yes.

The Court: In conversation with him?

The Witness: Yes, he instructed me.

The Court: In your office?

The Witness: Either at my office or over the phone, I don't remember.

The Court: The previous answer may be stricken.

Mr. Diether: Thank you. [995]

\* \* \*

Q. I show you Plaintiff's Exhibit 23 and ask you if you ever saw that document before, that letter before.

(Testimony of James E. Sweeney.)

A. (Examining document.)

Mr. Dasteel: Is that dated August 1st?

Mr. Bunn: Yes, it is dated August 1st.

The Witness: Yes.

Q. (By Mr. Bunn): Where did you see it?

A. In Mattoon's office.

The Court: What date?

The Witness: I don't remember.

The Court: Was it the date it bears?

The Witness: I assume that it was.

The Court: Were you there when he dictated it and wrote it?

The Witness: Yes.

The Court: He dictated it to your stenographer?

The Witness: Yes.

Q. (By Mr. Bunn): Did you answer in the affirmative or negative? A. Yes. [996]

Q. Now, Mr. Sweeney, did you receive any instructions from the Citizens Bank in regard to any of the wire in question here?

A. The instructions are in that letter that we had here that I received on the 31st. [997]

\* \* \*

The Court: Mr. Sweeney, Mr. Bunn has handed you a file there. A number of documents have been taken from it and marked for identification in this court. Will you look at that file and state generally whether or not it is what you refer to as the file relating to this matter?

The Witness (Examining file): Yes, it is.

(Testimony of James E. Sweeney.)

The Court: You do not know whether it contains all the documents?

The Witness: It contains all the shipping documents.

The Court: Very well. Did it contain all of the documents relating to that matter in the office of Mattoon & Company when you secured it and brought it here with Mr. Bunn?

The Witness: Yes.

Q. (By Mr. Bunn): Do you know whether or not, prior to the bringing of it here by you and me the other day under that stipulation, there has been at any time withdrawn from that file any other documents than the letter which is dated July 29 and was introduced in evidence here this morning and shown to you?

A. That withdrawal and the freight bill. [998]

The Court: Otherwise your testimony is that the file was in the same condition then as it was when you left the employ of Mattoon & Company in 1947?

The Witness: Yes.

Q. (By Mr. Bunn): In the meantime, do you know whether the contents of that file have been made available for personal examination to both Mr. Diether's office and to me? A. Yes.

Q. In the meantime? A. Yes.

Q. Now did you do anything in regard to this wire subsequent to your receipt of the letter of in-



(Testimony of James E. Sweeney.)

structions from the Citizens Bank in addition to what you have already told us?

\* \* \*

The Court: I think that is a conclusion.

Q. (By Mr. Bunn): Did you comply with any instructions of the Citizens [999] Bank?

The Court: That calls for a conclusion.

Mr. Bunn: That is the reason I asked it the other way.

The Court: I think you are justified in suggesting specific occasions.

Q. (By Mr. Bunn): Did you do anything in regard to the directing or supervising of the shipment of any of this wire? A. Yes.

Q. What did you do?

Mr. Diether: Just a moment, your Honor. I object to that question on the ground that there is no proper foundation laid. First we have to get the wire from the dock to some place where he can ship it. I think there should be some testimony first as to the fact that he has taken some steps to have it within a freight dock.

The Court: Maybe that is part of the steps he took to ship it.

The Witness: Yes.

The Court: What did you do in relation to shipping the wire?

The Witness: Followed the instructions issued by the bank, which were to contact Mr. Londono for the actual details but to return the documents,

(Testimony of James E. Sweeney.)

the original documents, to the bank, and that was done. [1000]

The Court: The original shipping documents?

The Witness: Yes, the original shipping documents.

The Court: What do you mean, original shipping documents?

The Witness: Bill of lading, commercial invoice and insurance policy.

Q. (By Mr. Bunn): On the shipments to South America, you mean? A. Yes.

The Court: Did you make shipments of the wire to South America?

The Witness: Yes. [1001]

\* \* \*

The Court: Did you make the export declarations in all your shipments?

The Witness: That is a necessity, yes.

The Court: Did you?

The Witness: Yes.

The Court: And filed it here with the local customs office?

The Witness: Yes. [1002]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, can you readily from that file now state what was the first of the several shipments which you caused to be made of that wire? A. Yes. [1003]

\* \* \*

Q. (By Mr. Bunn): I show you a memorandum

(Testimony of James E. Sweeney.)

here on a Johnson Line heading and ask you if those pencil memoranda are in your handwriting.

A. Yes.

The Court: Have it marked for identification. That will be No. 38?

The Clerk: Yes, your Honor.

(The document referred to was marked Plaintiff's Exhibit No. 38 for identification.)

\* \* \*

Q. By Mr. Bunn): Did you make that up at my request sometime after September 1, 1947, those pencil figures? A. Yes, I am sure I did.

Q. Where did you get the information?

A. Off the bills of lading.

Q. In that file before you? A. Yes. [1004]

Q. Does that memorandum help you now to check the figures in that file of shipments? A. Yes.

Q. Will you check the file now of shipments and tell us what your first shipment was and what ship it was on?

The Court: And the date.

Q. (By Mr. Bunn): And the date of the shipment.

The Court: And quantity. [1005]

\* \* \*

Mr. Bunn: Just a moment, please, sir.

You have handed me several documents.

Q. Was that bill of lading last mentioned issued singly or in a set? [1007]

(Testimony of James E. Sweeney.)

A. Well, the practice is three originals and all the copies that may be required.

Q. What have you just handed me?

A. Copies, and some are signed by the steamship company.

Mr. Bunn: I am taking off from under the clip, if your Honor please, the copies of bills of lading——

Q. Are they all signed? A. Yes.

Q. Does that make them duplicates?

A. Copies signed can be called duplicates; yes.

Q. Is each one stamped copy?

A. Yes, copy, non-negotiable.

The Court: They are carbons of the original?

The Witness: Yes, exactly. [1008]

\* \* \*

The Witness: Well, these were all issued in accordance with the bank's instructions and says Mattoon & Company, shipper, consignee, order of shipper, and the arrival notice—do you want the ultimate consignee?

The Court: If it is on the bill of lading.

The Witness: Yes, Alberto Echavarria.

The Court: In other words, they were shipped by Mattoon & Company to Echavarria on the order of Mattoon & Company?

The witness: Yes. That made the documents negotiable.

Q. (By Mr. Bunn): Did that make them order bills of lading or otherwise?

A. Yes, order; shipper's order.



(Testimony of James E. Sweeney.)

The Court: And both of those were to the same consignee?

The Witness: Yes, they were the same, exactly the same setup.

The Court: And they went to Cartagena?

The Witness: Yes. [1009]

\* \* \*

The Court: Do you have a series of documents there ready for marking?

Mr. Bunn: Yes, sir. [1012]

The Court: Let us have them.

Mr. Bunn: They have already been marked.

The Clerk: The memorandum is marked 38, and then 38-1, 38-2, 38-3, 38-4, 38-5, and 38-6.

The Court: 38 is the memo?

The Clerk: Yes, your Honor.

The Court: And 38-1, 2, 3, 4, 5, and 6 for identification are described as shipping documents?

Mr. Bunn: Yes, your Honor.

(The documents referred to were marked Plaintiff's Exhibits Nos. 38-1, 38-2, 38-3, 38-4, 38-5, and 38-6 for identification.) [1013]

\* \* \*

The Court: I think that all of these can go in generally on the proposition of the movement of the wire, the possession of the wire and the dates and quantities.

I think although they all may go in generally in connection with the plaintiff's theory that the plain-

(Testimony of James E. Sweeney.)

tiff was under an obligation to do everything that he could in mitigation of damages.

\* \* \*

The Court: Counsel, if I remember correctly, either you [1015] or Mr. Dasteel or both of you on cross-examination of Mr. Londono proceeded to ask, and I permitted you to ask, how much money he had received, how much money he had actually received, and one of the unsettled questions of law in this case, among others, is what is the proper measure of damages in the event the plaintiff is entitled to recover. Is it the fair market value in Los Angeles, or the amount that he actually received?

Mr. Diether: Your Honor may be right.

The Court: I think they are admissible generally against all parties on the two grounds that I have stated. Otherwise I think it is subject to various objections. I will permit counsel to examine them and overrule all objections and admit them only for the limited purposes which I stated a moment ago. [1016]

\* \* \*

The Court: In connection with the mitigation of damages, it seems to me that almost everything Mattoon & Company did is admissible in this transaction. There has been testimony that Mattoon & Company hired Koppel, that they hired truckers, that they segregated the wire and the like. Technically everybody is entitled to have Mr. Koppel come up and say, yes, I paid so-and-so. Of course

(Testimony of James E. Sweeney.)

technically you could require the plaintiff here to produce the man who actually did the work and say that he worked so many hours and that he was worth so much money. But it seems to me that all of that material is admissible and material and competent in connection with this case for that purpose. [1018]

Mr. Bunn: That is the only purpose for which we are putting it in.

\* \* \*

Mr. Hubert Morrow: But I think we can save a great deal of time if Mr. Bunn will be permitted to just ask the specific questions he wants as to certain quantity, shipped on a certain date, and let the witness testify from the documents.

Mr. Bunn: I am prepared to do so.

The Court: Very well. [1019]

\* \* \*

The Court: Now you have a set of documents that are marked 38-1 for identification.

The Witness: Yes.

The Court: Of what do those documents consist?

The Witness: The bill of lading and the freight bill covering.

Q. (By Mr. Bunn): Covering a shipment on what ship?      A. Moormacreed.

Q. How many rolls of wire?

A. 4017. [1023]

Q. How many pounds?      A. 225,500.

(Testimony of James E. Sweeney.)

The Court: And the date of the bill of lading?

The Witness: August 15, 1946.

The Court: Hand it over here to the clerk.

Now do the same thing with the next batch, that is, 38-2 for identification.

Q. (By Mr. Bunn): What is the next one, does it represent a shipment on the Westwind?

A. Yes.

Q. How many rolls of wire? A. 4,161.

Q. How many pounds? A. 428,583.

Q. What is the date of the bill of lading?

A. August 15, 1946.

Q. In addition to the bill of lading there is a freight bill attached there for the shipment?

A. Yes.

Q. What is 38-3?

A. Shipment on the Westwind.

Q. How many rolls? A. 3,862.

Q. How many pounds? [1024]

A. 397,786.

Q. What is the date of the bill of lading?

A. August 15, 1946.

Q. What is 38-4—

The Court: On 38-2, there was also a carbon.

The Witness: Of a transmittal, yes.

The Court: A transmittal to the Citizens Bank?

The Witness: That is right. There is also on 38-3 then.

The Court: If you will just state each document what it is.



(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): What is 38-4, what are the documents under No. 38-4?

A. Bill of lading—

Q. For shipment on what ship?

A. The SS Lookout.

Q. How many rolls? A. 9,444.

Q. How many pounds? A. 648,820.

Q. What is the date of the bill of lading?

A. September 3, 1946.

Q. What other documents, if any, are attached to that bill of lading?

A. There is a freight bill listing the freight charges on this shipment and one other shipment on the same ship. [1025]

Q. What is 38-5?

A. It is a shipment on the SS Lookout.

Q. How many rolls? A. 3,628.

Q. How many pounds? A. 351,300.

Q. What is the date of the bill of lading?

A. September 3, 1946.

Q. Are there any other documents thereto attached? A. No.

Q. Is that the other shipment about which you said that the preceding numbered exhibit had the freight bill on? A. Yes.

Q. Have you totaled the number of rolls and the weight of those shipments?

Mr. Diether: Counsel has just handed to the witness a typewritten document which is not numbered and has not been identified.

(Testimony of James E. Sweeney.)

Mr. Bunn: I will withdraw it and hand him the one in his own handwriting.

Q. Have you totaled the number of rolls, sir?

A. Yes.

Q. What is the total number of rolls on those five shipments? A. 25,112. [1026]

Q. What is the total poundage or total weight on those five shipments? A. 2,051,989.

Q. Pounds? A. Pounds.

Q. And how many tons is that approximately?

A. 1,026.

\* \* \*

The Court: Before you get to another subject I want to ask a question.

I want to call your attention to Exhibit 38-1. You stated that there was the freight bill and the bill of lading. The freight bill appears on its face to be dated August 15, 1946, Moormacreed, Moore-McCormack Lines agent to Mattoon & Company. The bill of lading is dated August 15, 1946, and the freight bill is stamped paid August 15, 1946.

Now from the usual course of business are you able to indicate by the date of the payment of the freight bill whether or not the Moormacreed sailed on or about August 15?

The Witness: No.

The Court: In other words, do you pay the freight bills after the freight sails or in the course of business?

The Witness: It could be either way. You could pay them before or after.

The Court: So that the date stamped paid on

(Testimony of James E. Sweeney.)  
each one of [1027] these freight bills—for instance on 38-2, the bill of lading is August 15 and the freight bill is stamped paid August 30—Westwind, that would give no indication as to the date of the sailing of the vessel?

The Witness: Absolutely not.

The Court: Very well.

Mr. Bunn: Now, if your Honor please, the document Mr. Diether is about to object to is a summary of those figures.

The Court: In each one of these did you forward the original bill of lading to the Citizens National Bank together with a consular invoice and the commercial invoice?

The Witness: Yes.

The Court: On or about the date the bill of lading was issued?

The Witness: On or about the day we paid the freight.

The Court: On or about the day you paid the freight bill?

The Witness: Yes.

Mr. Bunn: I thought this document might be helpful to everybody. It is the summary from which these figures have been testified to by the witness, only it has been typed instead of using this little slip of paper.

The Court: Did you prepare it?

Mr. Bunn: I prepared it from this.

Mr. Diether: Let it be marked for identification  
hen. [1028]

(Testimony of James E. Sweeney.)

Mr. Bunn: Will you please mark it?

The Court: That will be 38-7.

(The document referred to was marked Plaintiff's Exhibit No. 38-7 for identification.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, from Mattoon's file does there appear to have been still another shipment of wire on behalf of Mr. Londono? A. Yes.

Q. I ask you what is the group of documents numbered 38-6?

A. It is a shipment on the Clearwater Victory, 477 rolls of barbed wire.

Q. Called bales therein?

A. Yes, they call them bales. Weight, 50,085 pounds.

Q. Does the tonnage appear therein?

A. Well, the pounds, not the tons.

Q. It doesn't appear as tons? A. No.

Q. All right.

A. The date of the bill of lading, April 21, 1947.

Q. What other documents are there to that attached?

A. There is a freight bill attached, Mattoon & Company's invoices.

Mr. Diether: For what? [1029]

The Witness: One for dock storage at Moore-McCormack, and the other for the various charges including the documentation and the insurance and the ocean freight charges; also a copy of the consular invoice and a duplicate, one copy of the insurance policy, copy of the export declaration, and a



(Testimony of James E. Sweeney.)

copy of a transmittal letter to the agent Roldan y Cia., Cartagena. [1030]

\* \* \*

The Court: May I ask one question? In each one of these there is attached a freight bill, each of which is stamped paid. Do you know of your own knowledge whether or not that sum of money was paid for freight as indicated on each one of these bills connected with Exhibits 38-1, 2, 3, 4, 5, and 6, the sum of money therein indicated?

The Witness: Yes.

The Court: Was it?

The Witness: Yes. [1031]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, did you disburse or cause to be disbursed any sums of money in payment of expenses incurred on Mr. Londono's behalf in connection with the wire in question other than ordinary expenses of the respective shipments to South America? Is that clear, is that question clear to you? A. Yes.

Q. What is your answer? A. Yes.

Q. Did you cause to be made up any summary of those special expenses so disbursed or caused to be disbursed by you? A. Yes.

Q. Do you have it before you? A. Yes.

Q. What is it in?

A. In the form of a letter addressed to you.

Q. Addressed to Mr. Londono's attorney, Thomas Bunn? A. Yes.

Q. Are you able—answer yes or no—from that

(Testimony of James E. Sweeney.)

summary to testify item by item whether or not the disbursements therein reported were [1032] made?           A. Yes.

Q. And for what purpose they were made?

A. Yes.

The Court: While counsel are looking at that, I understood you to say that somewhere in each one of these sets of documents there was indicated the number of the export declaration.

The Witness: Yes. It is on the face of the bill of lading.

The Court: On the face of the bill of lading?

The Witness: Yes, in the body (indicating).

The Court: I see. Very well.

Mr. Diether: Better have it marked for identification if you are going to show it to the witness.

The Court: No. 39.

(The document referred to was marked Plaintiff's Exhibit No. 39 for identification.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, will you state the items shown on the summary to which you just testified?

Mr. Diether: I object to that, if the court please.

\* \* \*

Mr. Diether: I object that that is not the best evidence [1033] of the charges, that the summary which the witness has just identified as Plaintiff's Exhibit 39 does not attempt to indicate whether or not the dock charges for any particular period, whether it included dock charges for the wire which

(Testimony of James E. Sweeney.)

Dulien had on the dock at the same time, and there is no indication of the quality of the wire or the period of time——

The Court: Quality?

Mr. Diether: Yes, quality or the periods involved.

There is also included on this summary the taking of the pictures of the wire. I don't think we are responsible for collecting evidence for the plaintiff.

Mr. Bunn: That item is not in the complaint.

Mr. Diether: There is also various items here of Mattoon & Company. It just says "extra expense."

Mr. Bunn: It is one item, not various items.

Mr. Diether: It shows extra expense of Mattoon & Company of a certain amount. I don't think the witness is qualified to express an opinion of the actual expenses from any such summary as that.

Mr. Dasteel: I join in the objection.

Q. (By Mr. Bunn): Mr. Sweeney, are there supporting documents in this file for these charges?

A. Yes.

The Court: Did you make up that summary from your files [1034] and records?

The Witness: I made it up from the supporting records.

The Court: From the supporting records?

The Witness: Yes. [1035]

\* \* \*

The Court: We have argued that before, and we will probably argue that again here. The difficulty

(Testimony of James E. Sweeney.)

in connection with ruling on these various objections is that you have four different defendants here, each of them setting up a different theory of law concerning their lack of responsibility or their measure of it if they do have any. The evidence is admissible against the defendants Dulien and against the defendant Bank under the present status of the case and of the pleadings.

It is doubtful whether it is admissible against the defendant Matson and the defendant United States under the state of the present case. But I will overrule the objections and each side may reserve their right for a motion to strike it in the event it is deemed wise on their part to do so.

Mr. Dasteel: May the record show I join in these objections?

The Court: That the question was incompetent, irrelevant and immaterial?

Mr. Hubert Morrow: We shouldn't have said immaterial, we are only raising the question of immateriality and we are not objecting on the ground that it is not the best evidence.

The Court: I understand. I will overrule your objections, subject to a motion to strike on that ground, and I [1036] will overrule the objections made by the Bank and the defendants Dulien.

Mr. Diether: May I add to my objection?

The Court: Very well.

Mr. Diether: On the further ground it is incompetent, irrelevant and immaterial, not within the contemplation of the parties and any of these



(Testimony of James E. Sweeney.)

expenses could not have been proximately caused by any act of the Bank alleged in the complaint, and it is not the best evidence.

Mr. Dasteel: I make the same objection.

The Court: The objections are overruled.

In connection with the objections of the Bank that this is not the best evidence, I would suggest that the entire file of Mattoon & Company be marked for identification.

Mr. Bunn: I am happy to have it so marked.

The Court: The whole file. That document you had was marked No. 39. The whole file will be marked No. 40.

\* \* \*

The Court: The whole remaining file of Mattoon & Company, excluding the various documents which have already been withdrawn and marked or otherwise identified in the Court [1037] proceedings.

Mr. Bunn: Do you have in hand now the entire file on the Dulien wire transaction except for the documents I have already called attention to that were withdrawn?

The Witness: And this smaller one that has to do with the transmittal to Gonzalez & Blanco.

Mr. Bunn: I think that can go in too.

The Court: Both can go in as No. 40. In other words, they are Mattoon & Company's files.

Mr. Bunn: And that includes these documents he is about to testify to?

The Court: Yes, everything.

(Testimony of James E. Sweeney.)

Mr. Bunn: Now they are marked No. 39, are they?

The Court: No, they are marked No. 40 for identification.

Mr. Laven: What is No. 39?

The Court: No. 39 is the summary which he said he made concerning charges, and I take it you are now about to reframe your question.

Mr. Bunn: Yes, sir, and I am about to lead the witness.

Mr. Diether: May it be understood that my objection goes to all this line of testimony without further objection?

Mr. Dasteel: And mine too.

The Court: Yes.

Mr. Hubert Morrow: And ours also? [1038]

The Court: Everybody's.

(The documents referred to were marked Plaintiff's Exhibit No. 40 for identification.)

Q. (By Mr. Bunn): Mr. Sweeney, when I ask you if you paid, I include also "or caused to be paid."

Did you pay dock storage at Pier A, Long Beach, in the amounts totaling \$2,837.45? A. Yes.

Q. Did you pay a charge of \$39.85 for inspection by Toplis and Harding? A. Yes.

The Court: Are all these figures going to coincide with the figures you have put in your complaint?

(Testimony of James E. Sweeney.)

Mr. Bunn: They are, because that is where I got them from.

The Court: Go ahead then.

Q. (By Mr. Bunn): Did you pay \$48 for segregation, supervision of wire for shipment on the Westwind? A. Yes.

Mr. Bunn: You will notice, gentlemen, I have not asked him any question about the \$25.75 item which is No. 3 there. It is not in the complaint.

Q. Did you pay \$130.50 extra drayage on account of bad [1039] condition of the wire shipped on the SS Westwind? A. Yes.

Q. Did you pay \$605.86——

The Court: To whom did you pay these items?

The Witness: It is in the supporting documents.

The Court: Very well. Go ahead.

Q. (By Mr. Bunn): Did you pay \$605.86 for sorting labor on 446 tons for shipment on the SS Westwind? A. Yes.

Q. Did you pay \$507.38 for sorting labor on the 112.75 ton shipment on the SS Moormacreed?

A. Yes.

Q. Which appears in this summary as 112 tons?

A. Yes.

Q. Did you pay \$1,621.62 for sorting labor in connection with a shipment or shipments on the SS Lookout? A. Yes.

Q. Does that list of disbursements through that point constitute the special expenses which you actually paid out? A. Yes.

Q. Now, Mr. Sweeney——

(Testimony of James E. Sweeney.)

Mr. Diether: Just a moment. May I ask the Court to have this witness at some convenient time pick out from the file of Mattoon & Company, which is marked Exhibit 40, the [1040] supporting data which he claims supports these figures?

Mr. Bunn: They are right here, sir.

The Court: You do have them?

Mr. Bunn: Yes.

Mr. Diether: Have they been extracted from Exhibit 40 or are they a part of it?

The Court: They are a part of the file, Exhibit 40 now.

\* \* \*

The Court: Mr. Witness, Mr. Bunn has a batch of papers in his hand. You have just testified concerning extra expenses. You have gone through file No. 40, have you, and separated the supporting data?

The Witness: Yes.

The Court: You have looked through the papers he now has in his hand?

The Witness: I am not sure that they are all correct because of the condition of the file and the time we had to sort it during the recess.

The Court: So far as you have had time during the recess [1041] you have sorted out of the file and now have there, which you will attach to Exhibit 39 and mark Exhibit 39-A, the supporting documents which you have been able to extract so far. Give it to the clerk and get it marked now.

Mr. Diether: These ought to be numbered consecutively.



(Testimony of James E. Sweeney.)

The Court: We can have it done later when somebody starts to cross-examine him about them.

(The documents referred to were marked Plaintiff's Exhibit No. 39-A for identification.)

Q. (By Mr. Bunn): Mr. Sweeney, in your check of those supporting documents did you find documents supporting in toto every one of those items? A. Yes.

Q. What about the Southern Pacific charges?

A. It is in the file.

Mr. Diether: Are they in the batch of papers which were handed to the court?

The Witness: I said I didn't have a chance to pull them all out.

The Court: Just a moment. I indicated that these would be called Exhibit 39-A as a whole. The clerk will tack these together and then go through and mark each document as 39-A, etc., on through the entire list. [1042]

Q. (By Mr. Bunn): Mr. Sweeney, the last item on the summation from which you were testifying appears to be a charge of \$750 by Mattoon & Company. Will you explain that item?

A. Well, that was set up in the books against Londono for all the extra work involved because of the condition that arose regarding the movement of the wire.

Q. Did you do that work?

A. Yes, mostly myself.

(Testimony of James E. Sweeney.)

Q. Is the figure of \$750 a proper charge for that work?

Mr. Diether: I object to that, if the Court please, on the ground that there is no proper foundation to show the amount of work he did or what he did.

The Court: I think that is pretty much of a shortcut question.

Mr. Bunn: That is right. I can ask him what he did.

The Court: I do not think that there is sufficient foundation.

What is your usual basis of your charge?

The Witness: The usual basis?

The Court: A percentage or time?

The Witness: Time, the size of the transaction, the amount of work involved.

The Court: In other words, it is time and percentage?

The Witness: Yes. [1043]

Q. (By Mr. Bunn): Did you make any trips yourself to the Harbor, Long Beach, Wilmington, San Pedro, in connection with the movement of this wire that you would not have had to make an ordinary shipment where the quality of the merchandise was not in question? A. Yes, many.

Q. Do you have any idea how many trips you made down there?

A. I don't remember now.

Q. Can you approximate it at all?

A. Well, around the time the ship arrived I would estimate six or seven times, which would

(Testimony of James E. Sweeney.)

take at least a half a day, and then in the matter of the dock demurrage it required a personal representation with the Harbor Department in order to get the dock demurrage reduced to where it was within reason so that there wouldn't be any further penalties on it.

Q. By the way, what, if anything, did you accomplish in that matter?

A. The reduction—I don't have the figures here—but I think the reduction was in the neighborhood of about 70 per cent of the original cost.

Q. Can you give us——

The Court: You mean the reduction was 70 per cent or the amount paid was 70 per cent? [1044]

The Witness: It was 70 per cent; yes.

Q. (By Mr. Bunn): In other words, you got what would otherwise have been——

The Court: He got 70 per cent reduction. I understand.

Q. (By Mr. Bunn): Can you give us an approximation of how much money that saved on demurrage?

A. About \$3,000.

Q. And in what manner did you accomplish that?

A. By written request and finally a personal visit to the head of the Board of Harbor Commissioners of Long Beach.

Q. Did you make any other trips to the Harbor in connection with this matter, unusual I mean?

A. I went twice. Once I had an appointment that he had to break and the second time I was able to see him.

(Testimony of James E. Sweeney.)

Q. You mean the Harbor board man?

A. Yes.

Q. Did you make any other trips to the Harbor in connection with this barbed wire transaction especially, and when I say "especially" I distinguish from what would be normal in your handling and direction of shipments if there had been no question of the quality of this wire.

A. Well, I made two or three trips with Mr. Londono at his request, once to Matson's office and another time back [1045] down to the dock at Pier A.

Q. Did you perform any other special service besides such trips to the Harbor from or at your office occasioned by the questionable condition of the wire?

A. Well, there is the arrangement for the sorting of the merchandise, which was of great importance, and we had to change—we had labor troubles—we had to have different firms do it, and that took a lot of time to take care of.

Q. Now is the charge of \$750 in your opinion a proper charge for such services?

Mr. Diether: I object to that, if the Court please. There is no foundation laid. And may I examine this witness on voir dire as to his qualifications to express an opinion?

The Court: I do not think so. I do not think there is sufficient foundation yet.

Did you have other charges besides that?



(Testimony of James E. Sweeney.)

The Witness: The fees for handling the shipments.

The Court: Were they paid?

The Witness: Yes.

The Court: How much was that?

The Witness: Well, it varied from the size of the shipment.

The Court: Do you know how much altogether?

The Witness: No, I don't remember.

Mr. Bunn: My question, if your Honor please, went to [1046] special services only.

The Court: I know that, but I want to see how much he got.

The Witness: It is in the invoices in the file here, so much per ton was the handling fee.

The Court: So much per ton?

The Witness: Yes.

The Court: And this is a general overall special charge?

The Witness: Yes.

Mr. Bunn: Do I understand that there is still insufficient foundation?

The Court: No, I think there is sufficient foundation for him to testify. What I had in mind goes more to the weight of his testimony than to its admissibility.

Mr. Diether: We haven't heard yet as to how this charge compares with any charge that he made in connection with the regular service. He says a percentage. We don't know whether it is big or little.

(Testimony of James E. Sweeney.)

The Court: Can you tell by looking at the file how much a ton you charged?

The Witness: Yes.

The Court: Was it the same price for every ton?

The Witness: Oh, yes. There was no variation. We established a price per ton and stuck [1047] to it.

Q. (By Mr. Bunn): That is for everybody?

A. For everyone that we handled the barbed wire for. (Examining file) 50 cents a ton.

The Court: Now that is just 50 cents a ton for the tons you shipped, the 1,000 and whatever it was?

The Witness: That is right.

Mr. Diether: 50 cents per ton?

The Witness: Per ton.

Q. (By Mr. Bunn): Was that the usual normal charge?

A. That was within reason for comparable service any place.

Q. Without regard to any special circumstances?

Mr. Diether: Just a moment. We don't know what services were included within the regular services that he would do in connection with shipments for 50 cents a ton.

Q. (By Mr. Bunn): Were any of those special services as to which you have just testified included in the basis for the ordinary charge?

Mr. Diether: We don't know what he was to do yet under the regular services.

The Court: The objection is overruled. What is the pending question now? I think that it was

(Testimony of James E. Sweeney.)

whether or not [1048] that sum was a reasonable charge.

Mr. Bunn: For the special services rendered.

The Court: For the special services in addition to the charge of 50 cents a ton.

Mr. Bunn: For regular services; yes.

The Court: The objections are overruled. You may answer the question.

The Witness: The answer is yes.

Q. (By Mr. Bunn): And that is on Mattoon's books against Mr. Londono now? A. Yes.

The Court: By the way, in connection with Exhibits 38-1, 2, 3, 4, 5, and 6, in each one of them there is attached a bill of lading. Were those forms filled out by Mattoon & Company or were they filled out by the carrier?

The Witness: By Mattoon & Company with one exception. There was an error in the count and the steamship company didn't have time for us to bring a bill of lading over so they re-prepared the bill of lading themselves.

The Court: Is that the custom in the trade?

The Witness: Yes, it is.

The Court: And is it the custom in the trade for the shipper to indicate on the bill of lading any exceptions?

The Witness: No. [1049]

The Court: When exceptions are indicated on a bill of lading, what is the custom in the trade as to who causes it to be put there?

The Witness: The steamship company.

(Testimony of James E. Sweeney.)

The Court: Well, then, if I understand it correctly, the custom in the trade is that the shipper, that is, a broker such as Mattoon & Company acting for a shipper, prepares a bill of lading and takes it to the steamship company?

The Witness: Yes.

The Court: Then what happens? Do they go and look at the goods?

The Witness: The steamship company receives the freight and by means of what is known as a dock receipt they match it up with the bill of lading and on the dock receipt are noted the exceptions, if any, and the weight and the measurements so that they can assess the freight, and that is transmitted to the bill of lading and proper endorsements are made, whatever they happen to want to put on there.

The Court: So the custom is that the shipper or broker submits the bill of lading, the carrier compares that to what you call the dock receipt?

The Witness: That is right.

The Court: And if there are any exceptions noted on the dock receipt they are translated to the bill of lading?

The Witness: Yes. [1050]

The Court: That is the custom in the trade?

The Witness: That is the mechanics and custom.

The Court: And that was the custom followed in connection with these bills of lading?

The Witness: Yes.

Mr. John Morrow: I take it your Honor's ques-



(Testimony of James E. Sweeney.)

tion went to the custom in Los Angeles, California, where Mr. Sweeney operated, not anywhere else?

The Court: Solely.

Mr. Laven: Your Honor, I wonder if you would ask him relative as to order bills of lading and straight bills of lading. There is a straight bill of lading, your Honor, involved here.

Mr. Bunn: There is one that is a straight bill of lading.

The Court: Yes. What you have testified to as the custom is the custom on the order bills of lading?

The Witness: It is the custom on all ladings.

The Court: On all ladings?

The Witness. Yes.

The Court: Well, on this straight bill of lading there appears to be no exceptions.

Mr. Bunn: Is that the one from Londono to Londono?

The Court: Yes.

The Witness: I saw that. I noticed that. [1051]

The Court: Did your office prepare that?

The Witness: Yes. I would say the steamship company overlooked placing it on there. Why, I don't know.

The Court: In other words, your testimony is that in the ordinary course of business the steamship company would have caused that to be placed on there?

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: On a straight bill of lading in this community?

The Witness: Straight or order in any community.

The Court: Well, in this community. That is what we are concerned with now.

The Witness: Yes.

Mr. Diether: The witness mentioned one bill of lading that was rewritten by the steamship company. May we know which one that was?

The Court: Was that the straight bill of lading?

The Witness: No, it is I think the 4817 rolls. There was a miscount.

Q. (By Mr. Bunn): You mean 4017?

A. Yes, I believe so. [1952]

\* \* \*

(The document referred to was passed to the witness.)

The Witness: Yes, this is it.

The Court: That is, Exhibit 38-2 was rewritten by the carrier, Moore-McCormack?

The Witness: Yes.

The Court: 38-6 was prepared by Mattoon & Company?

The Witness: Yes.

\* \* \*

Mr. Bunn: I am about to show the witness a letter from Dulien Steel Products dated July 29, to Mattoon & Company.

(Testimony of James E. Sweeney.)

Mr. Diether: It hasn't been marked yet.

The Court: 41.

(The document referred to was marked Plaintiff's Exhibit No. 41 for identification.)

Mr. Bunn: Do you want to see this one, gentlemen (exhibiting document to counsel)?

Mr. Bunn: The reason that this is not on my list is that it was in Mattoon's subpoenaed file.

The Court: That is a letter from Dulien to Mattoon?

Mr. Bunn: Yes, your Honor.

Q. Mr. Sweeney, had you seen that letter before?

A. Yes.

Mr. Diether: It is dated what date?

Mr. Bunn: July 29, 1946. [1053]

Q. Do you know that it was received in Mattoon's office? A. Yes.

Mr. Diether: On or about the date it is dated?

Q. (By Mr. Bunn): On or about the date it is dated? A. About.

Q. Does that include the next day possibly?

A. Most likely.

The Court: Do you offer this in evidence?

Mr. Bunn: Yes, your Honor.

The Court: Admitted. No. 41 in evidence.

(The document referred to was marked Plaintiff's Exhibit No. 41 and received in evidence.)

Q. (By Mr. Bunn): Now, Mr. Sweeney, what are the title documents on the shipments of wire

(Testimony of James E. Sweeney.)

that Mr. Londono caused to be shipped by you to South America?

Mr. Diether: That calls for a conclusion of the witness.

The Court: I think it calls for a conclusion of the witness. I think that he can testify to what the custom in the trade is. [1054]

\* \* \*

Q. (By Mr. Bunn): What documents, if any, were in the trade accepted as the best evidences of title to the merchandise?

Mr. Diether: That is objected to, if the court please.

The Court: On the shipments to South America.

Q. (By Mr. Bunn): On the Londono shipments to South America?

Mr. Diether: I object to that on the ground it is incompetent, irrelevant and immaterial and it has no bearing on any issues involved in connection with the cause of action against the Bank. And I would like to inquire what the purpose of this testimony is.

Mr. Bunn: The purpose is to show that he gave the evidences of title of that merchandise to the Citizens Bank and not to Mr. Londono because the Citizens Bank had a \$54,000 interest in the beginning and that Mr. Sweeney was under instructions from them to see that their interest was protected. That is the purpose of it.

\* \* \*



(Testimony of James E. Sweeney.)

The Court: The objection is overruled. [1055]

\* \* \*

The Court: Is there not a pledge agreement from Londono to the Bank?

Mr. Diether: Yes, but we did not have physical possession of it and we at that time by that letter of July 31, instructed, pursuant to Mr. Londono's instructions, them to ship the wire. We had released it absolutely on July 31, pursuant to Mr. Londono's instructions.

Mr. Bunn: And to do what with the title papers? Return them to the Bank?

Mr. Diether: The title papers were merely to protect us so that we could get some money to pay on account of our note.

The Court: Objection overruled.

Mr. Bunn: Read him the question, Mr. Wahlberg.

(The question referred to was read by the reporter as follows:

("Q. What documents, if any, were in [1057] the trade accepted as the best evidence of title to merchandise?

("The Court: On the shipments to South America.

("Q. On the Londono shipments to South America.")

(Testimony of James E. Sweeney.)

The Court: When you say "Londono shipments" you mean shipments similar to that——

Mr. Bunn: Yes, that he has been testifying to this afternoon.

\* \* \*

The Witness: Well, the ocean bills of lading and the consular and commerical invoices.

Q. (By Mr. Bunn): And what did you do with those documents, Mr. Sweeney?

A. Transmitted them to the Citizens Bank.

Q. Did you deliver any of them to Mr. Londono direct? A. No.

The Court: Mr. Sweeney, did you at any time take out an insurance policy against the risk of loss while on the dock at Los Angeles with loss payable in favor of the Citizens [1058] Bank to the extent of \$240,000 or any other sum?

The Witness: It is in the file here.

The Court: You did take it out?

The Witness: Yes, definitely.

The Court: You have the document in the file before you?

The Witness: Yes. [1059]

\* \* \*

The following proceedings were had.

\* \* \*

The Clerk: I beg your pardon, your Honor. In our numbers we started with 51 instead of 38 because there was a page skipped. [1062]

\* \* \*

(Testimony of James E. Sweeney.)

The Court: No. 38 will take No. 57. And since 38 was only marked for identification that number will be changed to 57 for identification.

I think perhaps we had all better start over. If each of you has the list Mr. Bunn gave you, plaintiff's list of documents for possible use of exhibits in trial, beginning with No. 36 at the top of the page. Do you all have those (assent)?

Document No. 38, marked there, that is marked for identification by the clerk and it has never been used. It now [1066] becomes document No. 56, for identification.

No. 40, for identification on his list will become 58, for identification.

Exhibits 39 and 39-A, which are in evidence, Mr. Bunn will go through the transcript and find where they are mentioned, and they will take a new number and be corrected in the transcript and assigned Nos. 55 and 55-A.

Is that clear?

Mr. Bunn: It is clear to me. I have it all written down.

The Court: No. 41, which is in evidence, Mr. Bunn will go through the transcript and make that correction to change it from Exhibit 41 to Exhibit 56.

Mr. Diether: That is the number you gave to the one above there.

The Court: No, I did not. I gave it 55 and 55-A.

Mr. Diether: The one before that. I have in my records that it should be 56, that 38 should be 57.

(Testimony of James E. Sweeney.)

The Court: Let us leave it as it is now. We will give another number to 41, which will be 57. Is that clear?

Mr. Hubert Morrow: Pardon me, your Honor. You referred to a transcript that Mr. Bunn is going to correct. Of course we are not having any transcript written up now.

The Court: The only documents in evidence upon which the numbers are being changed, and the reason I did it is [1067] because those documents that are in evidence were put in evidence on Mr. Londono's testimony, therefore, there is a transcript and it is easier to correct the transcript than it is to correct it when there is none. [1068]

\* \* \*

May 2, 1950

**JAMES E. SWEENEY**

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Bunn:

Q. Mr. Sweeney, will you take the folders that have been marked No. 40, and identify voluntarily until you are stopped the several groups into which you have grouped the contents of those folders, and tell us what the respective documents are [1073]

\* \* \*



(Testimony of James E. Sweeney.)

The Witness: The first group covers different invoices of Mattoon & Company against Citizens National Bank covering the release of wire to Gonzalez & Blanco. In other words, Gonzalez & Blanco would pick up on the average a hundred tons, turn over to us or to Mattoon his check for the amount of the one hundred tons, which would be \$5,100 for every 100 tons, and we in turn would invoice the bank and transmit the funds.

The Court: Those are together now as a group?

The Witness: Yes.

The Court: We will mark those Exhibit 40-1.

(The documents referred to were marked Plaintiff's Exhibit No. 40-1 for identification.)

Mr. Bunn: May I ask him right there——

Q. Do the invoices on each one of those lots of 51 tons include anything other than the transmittal letter? That is, does it include a bill to the Bank?

A. Yes. [1074]

\* \* \*

The Court: The first set here on top appears to be an invoice from Mattoon & Company to the Citizens National Bank dated November 10th.

Immediately following that is a letter of transmittal dated November 26, 1946, and immediately following that is what purports to be a carbon copy, and immediately following that is what purports to be a carbon of some form.

Mr. Bunn: A delivery order.

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Dated November 26, 1946, directed to Transmarine Navigation and delivered to Gonzalez & Blanco. Now that would be one set?

The Witness: Yes.

The Court: And the same would follow through with the rest of them?

The Witness: That is right.

The Court: Very well. [1075]

\* \* \*

Q. (By Mr. Bunn): Yes.

A. Then there are here the balance of the supporting documents covering that—what is the total claim—\$6,540.66?

Q. \$6,540.66, was the figure you gave Friday.

A. And the other portion of these supporting documents that remained here Friday.

The Court: I think that is Exhibit 39. Let me see Exhibit 39.

(The document referred to was passed to the court.)

The Court: Yes, we started out here with 39. No. 39, is a copy of a letter from Mattoon & Company to Mr. Bunn listing additional expenses.

The Witness: Yes.

The Court: Now, you have extracted from Exhibit 40, documents which you call additional supporting documents?

The Witness: That is right.

The Court: These will be then attached to Exhibit 39, and become a part of that exhibit, and you

(Testimony of James E. Sweeney.)

have gotten down to V, 39-V, so I guess we can go on through and use the [1076] alphabet as many times as we need to describe them.

The Clerk: No. 39-W, marked for identification.

(The document referred to was marked Plaintiff's Exhibit No. 39-W for identification.)

The Witness: Then there is a group of additional copies of documents on each of the six shipments here which are all assembled in one group.

The Court: Are there six groups here?

The Witness: Yes, sir.

The Court: That is one group?

The Witness: No, that is all six. There is additional copies of bills of lading and freight bills, and so forth.

The Court: They are separated by a clip?

The Witness: Yes, by a clip. They are in chronological order starting with the Moormacreed, Westwind, etc. [1077]

\* \* \*

Mr. Diether: Those apparently apply to all of the six shipments. I wonder if the witness could separate them into the respective shipments by boats?

The Witness: They are.

The Court: Here is Exhibit 38-1, the documents which you identified the other day, and are marked for identification. That is the Moormacreed invoice from them and the bill of lading.

(Testimony of James E. Sweeney.)

(The documents referred to were passed to the witness.)

The Court: Now, this group of documents which you have now handed to me all relate to the same shipment?

The Witness: Right.

The Court: And are transactions related to it?

The Witness: Yes.

The Court: The first one appears to be a carbon of some filled-in form.

The Witness: That is a delivery order.

The Court: That is a copy of a delivery order?

The Witness: Yes.

The Court: And the next one? [1078]

The Witness: A freight bill.

The Court: A freight bill?

The Witness: Yes. Then consular invoice.

The Court: The next one is a consular invoice?

The Witness: Yes, and that is the invoice of Mattoon to Londono for the transaction.

The Court: And the next?

The Witness: That is submitted to the bank.

The Court: A carbon of a letter of transmittal to the bank of the consular invoice?

The Witness: Yes.

The Court: That was missing on this one?

The Witness: Yes.

The Court: And the next is——

The Witness: A copy of bills of lading, additional copies.



(Testimony of James E. Sweeney.)

The Court: Additional copies of one bill of lading or bills?

The Witness: It is one bill of lading; copies of it.

The Court: Very well. They will be attached to and become a part of Exhibit 38-1 for identification.

(The documents referred to were attached to and made a part of Plaintiff's Exhibit 38-1 for identification.)

The Court: Now let us see 38-2. [1079]

\* \* \*

The Court: Let us have Exhibit 38-4.

\* \* \*

And 38-4 presently consists of an invoice from the Grace Lines for \$9,075, and several copies of the bill of lading.

In addition to that you are now handing me as documents relating to the transaction taken from the Mattoon & Company file, a letter to the Citizens National Bank on the letterhead of Mattoon & Company indicating enclosure of three originals and one copy of the bill of lading, with certified [1082] consular invoice No. 674, and three originals and one copy of bill of lading with certified consular invoice 675, with a stamped payment on the bottom. There were two shipments involved here?

The Witness: That is right.

\* \* \*

(Testimony of James E. Sweeney.)

The Court: This is part of the documents, it all relates to the shipment on the Grace Line?

The Witness: To the two shipments, your Honor.

The Court: To the two shipments on the Grace Line?

The Witness: Yes.

The Court: Part of the documents you are now handing me, which was the letter I have just indicated of October 11, a carbon copy of it, and additional copies of the bills of lading?

The Witness: Yes, except we have one mistake. This doesn't belong because it is 107 and this is 108.

Mr. Diether: I can't hear you.

The Court: He said that this one does not belong there. [1083]

The Witness: It goes with the other set under your hand.

The Court: This is all part of 38-4?

The Witness: Yes, you are right.

The Court: And this is the other copy. In other words, that is the only copy of bill of lading 107 that you have?

The Witness: That belongs with 38-5, your Honor.

The Court: Then these documents you have now handed to me complete the copies in Mattoon's files of things relating to the Grace Line shipments?

The Witness: That is correct.

(Testimony of James E. Sweeney.)

(The documents referred to were attached to and made a part of Plaintiff's Exhibit No. 38-4 for identification.) [1084]

\* \* \*

Q. (By Mr. Bunn): Will you take the first set under 40-1 and explain briefly what each document is and what purpose it serves? [1093]

\* \* \*

The Witness: Well, the procedure, and it is outlined on the top transaction here, we might receive a phone call from Mr. Gonzalez advising that he wanted to pick up a hundred tons and we would then upon receipt of his check, certified check for the amount that he was to pick up, in most instances it was \$5,100, we would issue a delivery order to Transmarine authorizing them to deliver to Gonzalez & Blanco, or their order, 100 tons, or whatever the amount was of the wire.

Upon completion of that we would transmit the check to the Citizens Bank along with our invoice for the service.

The Court: For what service? What service did you render to the bank?

The Witness: In this case we were acting——

Q. (By Mr. Bunn): What does the invoice read in one case?

A. Services handling release of 100 tons of barbed wire account Gonzalez & Blanco.

In other words, we were responsible for the disposition of that wire, responsible to the bank. If

(Testimony of James E. Sweeney.)

we were to release a hundred tons to him without collecting that money, Mattoon [1094] of course would be responsible to the bank for whatever the value of the wire was that was taken off the dock.

The Court: It may be deemed that wherever he says "we were responsible," the witness shall have added "we considered ourselves responsible."

\* \* \*

The Court: When you say you were responsible, you mean you considered yourself responsible?

The Witness: We were responsible, and held responsible by them. That is a position that the banks and the forwarders and custom brokers operate between themselves. In other words, it is being placed in trust and in many instances the bank will issue a trust receipt where we have to sign for documents and return them to them in accordance with their instructions, and while there was no trust receipt on this transaction it amounted to the same thing.

The Court: By virtue of what?

The Witness: By virtue of the fact that if we had released——

The Court: Was there a document? By virtue of what document? [1095]

The Witness: In this case money, the check for the merchandise.

Mr. Diether: Your Honor, may that testimony be stricken? The acts of this witness as an agent for Mattoon & Company is not——



(Testimony of James E. Sweeney.)

The Court: It is obviously the conclusion of the witness.

Mr. Bunn: If your Honor please, this witness is an expert in the shipping business.

The Court: I know, but he is testifying concerning the legal relationship between the bank and Mattoon & Company, which is the province of this court. I think the witness is expressing only his opinion concerning their responsibility. It will be received as such and the motion to strike it will be denied.

Q. (By Mr. Bunn): Were the things which you have just said you did, done in accordance with the custom of the trade?           A. Yes. [1096]

\* \* \*

Mr. Bunn: I think counsel are overlooking the fact that under date of July 31, 1946, the bank issued a letter of instructions to Mattoon telling them what to do.

The Court: I recall the exhibit.

Mr. Bunn: I thought counsel may have forgotten.

Mr. Diether: But this transaction that the witness is speaking about is subsequent to the agreement of September 10th, where all acts of the parties were to be without prejudice. You will recall that the instructions of July 31 by the bank to Mattoon & Company was pursuant to the request of Mr. Londono to the bank of that same date, and all we were requesting was that the shipping documents for the reshipment of this wire from the United States to Colombia passed through the hands of the bank.

(Testimony of James E. Sweeney.)

The Court: So that the bank could get back its \$54,000.

Mr. Diether: That is not mentioned in the documents but it was for the purpose of enabling us to control those documents.

The Court: Why did the bank want to control it?

Mr. Diether: For the simple reason that we had this loan of \$54,000.

The Court: Yes. [1097]

Mr. Diether: Of course.

The Court: And you instructed Mattoon & Company to look out for your interests, did you not.

Mr. Diether: No, to return those documents to us.

The Court: So you would be sure and get your money first.

Mr. Diether: That is correct. But at this time the plaintiff had taken possession of the wire. This is only in connection with the reshipment after he had taken possession and was going to reship it out of the country.

The Court: We will get a chance to argue the case sooner or later. The question pending is material and competent. The objection is overruled.

\* \* \*

Q. (By Mr. Bunn): Now, Mr. Sweeney, have you since Friday made an effort to reconcile the figures in the letter from Mattoon to Mr. Londono's attorney, Mr. Bunn, of special expenses, Exhibit 39, the letter dated February 24, 1947, with the supporting documents? Will you answer that yes or no first, [1098] please?           A. Yes.

(Testimony of James E. Sweeney.)

Q. Did you find supporting documents for each and every dollar of the items listed in that letter except the \$750 charge by Mattoon?

A. All except that and approximately \$45 on one of the items.

The Court: Which item?

The Witness: It is the figure \$1,621.62.

The Court: Your adding machine tape shows \$1,621.62. You could not find the supporting document for \$45 of that item?

The Witness: That is right.

Q. (By Mr. Bunn): Now that adding machine tape you said was made before this trial commenced?

A. Yes.

Q. Made on or about the date of the letter you testified about?

A. On or about the date of the letter.

Q. Now do you have any explanation for the absence of that last mentioned document or documents approximating \$45?      A. No.

The Court: Do you have any itemization of the \$750 charge, that is, how you arrived at that? [1099]

The Witness: No.

The Court: It was an arbitrary figure selected as being what Mattoon & Company considers the value of their extra services in connection with this whole transaction?

The Witness: Yes.

Q. (By Mr. Bunn): Do you yourself have any personal interest at all in the payment or non-payment of that \$750 item?      A. No.

(Testimony of James E. Sweeney.)

The Court: Is it customary in the course of business by customs brokers in their dealings in matters of shipment to make additional charges where there is additional work other than that contemplated by the original transaction?

The Witness: Yes.

Q. (By Mr. Bunn): Do you know whether or not any of the wire which you, on the Moore-McCormack dock on the afternoon of July 31, 1946, directed be sent back to Pier 1-A, Long Beach, was returned to Pier 1-A, Long Beach? A. Yes.

The Court: Was it?

The Witness: It was. [1100]

\* \* \*

Q. (By Mr. Bunn): Were all the charges to which you have testified here by Mattoon to the Citizens Bank and to Londono, except the \$750, paid? A. Yes.

\* \* \*

Q. Mr. Sweeney, have you ever before since last Friday seen the four rolls of barbed wire which are in the courtroom marked Plaintiff's Exhibits 51, 52, 53 and 54? A. Yes.

Q. Where did you first see those rolls of barbed wire?

A. I saw them at Pier A selected by Mr. Bunn.

Q. You mean you heard the designation of those being [1102] made by Mr. Bunn to be moved?

A. Yes.



(Testimony of James E. Sweeney.)

Q. When did you next see those four rolls of barbed wire?

A. At Koppel Brothers' warehouse in Wilmington.

Q. Approximately when or how long after the selection you have just mentioned?

A. Five or six months.

Q. Can you trace the movements and locations of those four rolls of wire since you first saw them at Koppel's place?

A. Yes.

Q. Will you trace them?

A. At a date I don't remember I went to Koppel's with a truck of United Drayage Company, picked them up and brought them to United Drayage Company located at 1520 East Eighth Street in Los Angeles, and they were left there until—I also accompanied the truck of the United Drayage Company to deposit them over there.

Q. In this courtroom?

A. Yes.

Q. After this trial commenced?

A. I don't remember the date.

The Court: It was after the trial commenced?

The Witness: Yes, after the trial started. [1103]

The Court: I can take judicial notice of the fact that they were not here before.

Q. (By Mr. Bunn): And did you after you escorted those rolls of wire from Koppel's place to United Drayage Company's place and before you caused them to be brought into this courtroom, did you see them on any other occasions at Drayage Company?

(Testimony of James E. Sweeney.)

A. Yes, frequently, because I had had, and have, considerable business with United Drayage Company.

Q. Mr. Sweeney, calling your attention generally now to what we call the supporting documents for those expense items in the letter from Mattoon to Mr. Bunn, Exhibit 39 for identification, did you as an employee of Mattoon & Company cause each of the supporting items of expense to be paid to the persons, firms or corporations by which the charges were made to Mattoon? A. Yes.

Q. And then in turn billed Mr. Londono for them? A. Yes.

Q. What part, if any, did you have in directing the performance of the services?

The Court: For which the charges were made?

Mr. Bunn: For which the charges were made.

The Witness: That was part of the forwarding service provided. [1104]

Q. (By Mr. Bunn): Did you have any part in directing that service? A. Yes, all.

Q. And then did you have any part in checking the propriety of the bills received therefor?

A. Yes.

Q. And did you or did you not satisfy yourself in each case of the propriety of such bill before it was paid?

Mr. Laven: Just a moment. I will object to that as calling for a conclusion of the witness. Whether it satisfied him or not would be a conclusion.

Mr. Diether: I join in the objection.

(Testimony of James E. Sweeney.)

Mr. Dasteel: I join in the objection.

Q. (By Mr. Bunn): Did you or did you not determine that the bill was accurate in each case before you paid it?

Mr. Diether: I object to that as calling for a conclusion.

The Court: Overruled.

The Witness: Yes. [1105]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, answer yes or no to this question: Was there in 1946 and 1947 any custom in vogue in the Los Angeles Harbor, including Long Beach, Wilmington and San Pedro as such Los Angeles Harbor, regarding the placing of special guards on docks for the protection of merchandise on such docks awaiting removal therefrom?

\* \* \*

The Court: I think that the only thing you are concerned [1106] with here is whether or not it was a custom in the business by the person who was the recipient of the goods to place guards on the dock, not whether or not it was generally the custom for anybody else to. That is your question.

Mr. Bunn: Yes, that is right. That is what I intended my question to mean.

The Court: Was there a custom in the business, in the shipping business, for recipients of goods or shippers themselves to place special guards over goods while it was on the dock?

\* \* \*

(Testimony of James E. Sweeney.)

A. No.

The Court: What is the custom in the business with relation to the responsibility—when I say the custom in the trade I think you know what I mean—with relation to the responsibility for the safety of goods prior to the time that they are taken possession of away from the dock, that is, to be moved from the dock? [1107]

\* \* \*

Mr. Bunn: May I observe that in the cross-examination of Mr. Londono Mr. Diether I think specifically asked Mr. Londono if he did place a guard there.

Mr. Diether: Not me.

Mr. Bunn: Somebody did, or take any precautions on his own behalf to protect the wire there, and the inference certainly was that the interrogator thought he should have. I want to know whether or not it is customary for the owner of the merchandise to do that.

The Court: You have asked and answered that question. My question is superfluous. I will withdraw it. [1108]

\* \* \*

The Court: I think I will ask a question.

What is the custom of the trade with relation to the time when a receiver gets custody and control of the goods, that is, with relation to the time that it is on the boat, or on the dock; when is it customary in the trade?



(Testimony of James E. Sweeney.)

Mr. Diether: You mean when he can get possession of the merchandise?

The Court: What is the custom in the trade. When does the trade regard the goods as having come into the hands of the recipient?

Mr. Diether: I will object to that as calling for a conclusion of the witness.

The Court: Is there any custom?

Mr. John Morrow: I object to that.

The Court: Overruled.

The Witness: It is not a custom, it is a practice. The receiver of the merchandise when he signs for it, in other words, when it is picked up and put on a truck or rail car.

The Court: When he signs for it?

The Witness: To the dock operator, he has taken delivery. [1109]

Q. (By Mr. Bunn): For removal, you mean?

A. Yes.

Q. When he signs for it for removal from the dock?

A. Yes.

Q. As long as it is on the dock, according to the practice of the trade, who is in possession?

Mr. Diether: Just a moment. That is leading and suggestive and calls for a conclusion of the witness.

The Court: When he signs for it?

The Witness: Yes.

The Court: Now he may sign for it before removal from the dock, might he not?

The Witness: No.

The Court: The practice is only to sign for it

(Testimony of James E. Sweeney.)

when it is removed from the dock?

The Witness: Yes.

Q. (By Mr. Bunn): Is there an established practice regarding insurance on cargoes on the dock? [1110]

\* \* \*

The Court: Any kind of insurance.

\* \* \*

The Court: And they all relate to the safety of goods. The question is any kind of insurance. The objection is overruled. [1111]

\* \* \*

The Court: I think it is admissible in view of the foreshadowed contentions by questions on cross-examination. I do not remember what the precise question was, but what counsel wants to know is what the practice in the trade is concerning who carries the insurance after goods are unloaded and placed upon the dock and before they are taken from the dock, the shipper, the ship or the consignee or consignor. [1112]

\* \* \*

The Witness: It is the steamship company and the dock operator in conjunction or separately however they arrange it.

Mr. Hubert Morrow: I didn't hear the answer.

The Court: The steamship company and the dock operator, either in conjunction or separately, however they arrange it. [1113]

\* \* \*

(Testimony of James E. Sweeney.)

Q. Mr. Sweeney, did you cause to be placed any insurance on any of the, what we will call the Londono wire on Pier 1-A at Long Beach in 1946?

A. Yes.

Q. At whose instruction, if any, did you cause such insurance to be placed?

A. The Citizens Bank. [1114]

\* \* \*

Q. (By Mr. Bunn): Mr. Sweeney, I call your attention to Exhibit 39-F for identification, which is the copy of Glens Falls Insurance Company policy No. C-6697, and ask you if you have found the language therein which fixes the commencement——

The Court: Let us identify the policy. You have there a copy of an insurance policy with Glens Falls Insurance Company covering what?

The Witness: Covering insurance of the barbed wire, 2000 tons.

The Court: 2000 tons of barbed wire located where?

The Witness: Located at Pier A, Long Beach.

The Court: What is the date of the policy?

The Witness: July 31, 1946.

The Court: Did you secure the policy?

The Witness: Yes.

The Court: That is the policy you secured in accordance [1117] with your testimony that you did so at the instructions of the Citizens National Bank?

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Very well.

Q. (By Mr. Bunn): Now have you found in the policy the language purporting to fix the time of commencement of coverage? A. Yes.

Q. Will you read it, please?

A. The date of the policy, July 31, 1946, indicates the start of the coverage.

Q. And is there any more specific language in there?

A. Yes. It is to cover the wire at Long Beach, Pier A, to be delivered to other piers in Los Angeles Harbor or September 15, 1946, whichever first occurs.

Q. Does the word "be," b-e, appear in that sentence? A. No.

Q. You said "to be delivered."

A. No, "be" does not appear in that sentence.

The Court: Read the sentence.

The Witness: "Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs."

The Court: Do you know whether or not there was any other insurance on that wire at that time carried by anybody?

The Witness: The dock operators automatically have [1118] coverage.

The Court: In other words, of your own knowledge the dock operators have what is known generally as blanket insurance?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Sweeney——



(Testimony of James E. Sweeney.)

Mr. Diether: Just a moment. I think that before the sentence which the witness has just read should also be read this portion of the policy——

The Court: Somebody is going to introduce the whole policy in evidence, I suppose.

Mr. Diether: It says “laden”——

The Court: Let me see it.

(The exhibit referred to was passed to the Court.)

The Court: It reads:

“Barbed wire, 2000 tons—55,428 rolls, laden (under deck) on vessel and/or vessel or vessels and/or connections at and from Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs.”

The portion prior to the words “Long Beach Pier A” are printed; the words “Long Beach Pier A to delivered to other piers in Los Angeles Harbor or 9/15/46 whichever first occurs” are in typewriting, as is also the name of the insured, [1119] J. B. Londono.

Did you ever receive any instructions from Mr. Londono to secure this insurance?

The Witness: No.

Q. (By Mr. Bunn): Now, Mr. Sweeney, calling your attention generally to all of the documents which you have testified about this morning from Mattoon’s file and which has been appropriately marked here for identification, I ask you whether or

(Testimony of James E. Sweeney.)

not those documents were either prepared in Mattoon's office or received in Mattoon's office from other places indicated on their headings in the ordinary course of the business of Mattoon & Company's handling of the barbed wire in question.

A. Yes.

Q. Now did you at any time converse with Mr. Banning of Matson Navigation Company regarding this barbed wire in question? A. Yes.

Q. Were you acquainted with Mr. Banning before July 29, 1946? A. Only over the phone.

Q. Had you had business with him over the phone before? A. Yes, some.

Q. Where and when in whose presence, if anybody else's, did you converse with Mr. Banning about this barbed wire? [1120]

The Court: For the first time?

Mr. Bunn: Yes, for the first time.

The Witness: The day that delivery of the wire to Mr. Londono was stopped at the dock, I called Mr. Banning.

Q. (By Mr. Bunn): Do you know what date that was? A. No, I don't.

Q. What conversation ensued?

The Court: What do you mean by the "day when delivery of the wire was stopped to Mr. Londono at the dock"? Will you describe the occasion so that we can identify it?

The Witness: Well, the wire was being discharged and taken delivery of for several days; I

(Testimony of James E. Sweeney.)

would estimate perhaps about the 8th or 9th of August.

The Court: Was your conversation with Banning?

The Witness: About then; yes.

The Court. The early part of August?

The Witness: Yes.

Q. (By Mr. Bunn): What conversation ensued?

Mr. John Morrow: If the Court please, we don't know as yet what conversation he is calling for, but I take it that we may have our objection and motion to strike in the event it concerns a phase that we claim is not involved in the issues of the case, so we won't be precluded from objecting. [1121]

Mr. Diether: There is no evidence in the record yet of any stoppage of any delivery of any wire on or about August 8th or 9th, 1946.

Q. (By Mr. Bunn): Mr. Sweeney, what do you mean by stoppage of delivery to Mr. Londono?

A. They wouldn't allow any transportation company that we had issued orders to to pick it up to remove it from the dock.

Mr. Diether: Who wouldn't?

The Witness: The dock offices as represented by Matson.

Mr. John Morrow: Just a minute. I move to strike "as represented by Matson," if the Court please.

The Court: It may be stricken. I think perhaps you can fix the time by reference to previous testimony in the case.

(Testimony of James E. Sweeney.)

Mr. Bunn: He has fixed it now as about the 8th or 9th of August, I think he said, in answer to your Honor's question.

The Court: Mr. Londono testified that on some occasion he was there and attempted to secure selective delivery of the wire, his right to take good wire, as he called it, and that the net result was that he was told by someone that Gonzalez & Blanco had to have the choice, and that he couldn't have it until they had theirs, or something like that. Are you familiar with that occasion? [1122]

The Witness: Yes.

The Court: Is that the occasion you are speaking of?

The Witness: That is part of the occasion because they stopped us from taking delivery on any part, good or bad.

The Court: Let us fix that date, counsel.

Mr. Diether: May the witness' answer that they stopped, be stricken as a conclusion?

Mr. John Morrow: We join in the motion.

Mr. Laven: The Government makes the same motion.

The Court: Motion granted.

Q. (By Mr. Bunn): Mr. Sweeney, will you fix as definitely as you can the date—withdraw that.

Did you hear any instructions given on the dock at Pier 1-A, Long Beach, regarding selective delivery to Mr. Londono?

Mr. Dasteel: I object on the ground that that would be hearsay.



(Testimony of James E. Sweeney.)

Mr. Diether: You are asking about a conversation with Banning in trying to fix that date. Are you now shifting to some other subject?

Mr. Bunn: The Court asked me to try to fix the date in relation to these other things.

Mr. John Morrow: In trying to fix the date of the conversation, can't counsel confine his questions so he won't include all sorts of things that are objectionable? We have [1123] no opportunity to object to conclusions and the statement of counsel or anything by Mr. Sweeney.

The Court: Mr. Sweeney, can you have reference to the documents here and refresh your memory as to what date you are speaking of now in relation to your conversation with Banning?

The Witness: I don't think it is in the documents.

The Court: Would any of the documents refresh your recollection as to the event?

The Witness: As far as Mattoon's files are concerned, they would not. That day escapes me. I can't remember it. Perhaps if I heard someone's testimony on it I could.

Mr. Dasteel: If your Honor please, if the witness says he doesn't remember, that is all there is to it.

The Court: He says he does not remember the date.

Mr. Bunn: He doesn't have to remember the specific date in order to testify about a conversation.

Mr. Hubert Morrow: The witness says it is about the 8th or 9th of August.

(Testimony of James E. Sweeney.)

Mr. John Morrow: That is sufficiently definite as far as we are concerned.

The Witness: Excuse me. If the date is that important, since I think the shipping date of the first portion, which went out by Moore-McCormack on ladings dated August 15, it is possible that it was later than August 15th or about that time. [1124]

The Court: Was it at Banning's office or at your office?

The Witness: No, it was by telephone.

Q. (By Mr. Bunn): Did you make the call or did he make the call? A. I made it.

Q. Did you call Matson Navigation Company in the ordinary course of the telephone activity?

Mr. O'Malley: I object to counsel leading the witness. Let him ask him what he did. You have been leading the witness ever since you started this trial.

The Court: Objection overruled. Let us get on with the trial.

Mr. Bunn: You may answer.

The Witness: May I hear the question again?

(The question referred to was read by the reporter as follows:

("Q. Did you call Matson Navigation Company in the ordinary course of the telephone activity?")

The Witness: Yes.

Q. (By Mr. Bunn): And you talked with whom?

A. Mr. Banning.

(Testimony of James E. Sweeney.)

Q. What conversation ensued—one more question. Were you familiar with Mr. Banning's voice?

A. Yes. [1125]

Q. Did the gentleman on the other end of the line state that he was Mr. Banning? A. Yes.

Mr. Bunn: I think that is sufficient foundation for a telephone conversation, your Honor.

Mr. Diether: This is hearsay testimony as to the bank and I object to it on that ground.

The Court: Objection overruled, subject to a motion to strike.

Mr. Dasteel: I join in the objection.

The Court: Same ruling.

Mr. Diether: Will our objection go to all this line of testimony?

The Court: Yes.

Q. (By Mr. Bunn): What conversation ensued, Mr. Sweeney?

A. I said to Mr. Banning that the delivery to Londono had been stopped, and he was well aware of it, or he answered that he was well aware of it, and I explained that I was phoning him because no one else in Matson's organization could offer us a good explanation. And he said he was unable to do so because those were his instructions from the WSA attorneys.

Q. What were his instructions, did he say?

A. His instructions were not to allow further delivery of the wire to Londono. [1126]

I asked him if he objected if we would get in touch with the War Shipping Administration's attorneys,

(Testimony of James E. Sweeney.)

and he said no, and he furnished us with the name and phone number of the attorney in San Francisco.

The Court: Did he say who it was?

The Witness: It was Mr. Ball.

Q. (By Mr. Bunn): Where?

A. In San Francisco.

Q. Did you call Mr. Ball? A. Yes, I did.

Mr. O'Malley: Is this all the conversation?

The Witness: That was all the conversation with Mr. Banning.

Q. (By Mr. Bunn): Did you call Mr. Ball?

A. I phoned him late on that particular afternoon.

Q. Did you put in the call yourself?

A. I did; yes.

Q. What office did you ask for? What office did you ask the telephone company to connect you with?

A. The War Shipping Administration office in San Francisco.

Q. Did you give her the name of the man you wanted to talk to? [1127]

A. Yes. It was person-to-person.

Q. Were you thereafter connected with somebody? A. Yes.

Q. Did the person at the other end of the line identify himself? A. Yes.

Q. As who? A. Mr. Ball.

Q. Then did you have a conversation with Mr. Ball on the telephone? A. Yes.

Q. What conversation ensued between you?

A. I asked him what reason or what basis they



(Testimony of James E. Sweeney.)

were holding up the delivery of the barbed wire to Mr. Londono. His response was not concrete——

Mr. Laven: I object to that.

Q. (By Mr. Bunn): Tell what he said.

A. I can't remember the exact words.

Q. In substance.

A. He stated that Mr. Londono had no bill of lading and that their position was that one claim was better than two.

Mr. Laven: What was that?

The Witness: That one claim was better than two on the [1128] ship.

Mr. O'Malley: Is this the conversation?

The Witness: This is the substance of the conversation.

Mr. Laven: I object to the conclusion of this witness.

Mr. Bunn: He didn't say it was a conclusion.

The Court: Go ahead.

The Witness: There was nothing else to be accomplished so the phone conversation was ended.

Q. (By Mr. Bunn): Was the name of Gonzalez & Blanco mentioned in the conversation?

Mr. Dasteel: I object to that as leading, your Honor. He should simply ask this witness about the conversation.

The Court: Overruled.

The Witness: It might have been.

The Court: You do not recall?

The Witness: No.

Q. (By Mr. Bunn): Mr. Sweeney, at the termi-

(Testimony of James E. Sweeney.)

nation of the conversation to which you have just testified, had you been given any new or different instructions from Mr. Ball?      A. No.

Q. Was there after that telephone conversation between you and Mr. Ball any new and different instruction received by you for the removal of any of the wire at Pier A? [1129]

Mr. Diether: From whom?

Mr. Bunn: From anybody.

Mr. Laven: When?

The Court: After the telephone conversation.

Mr. Laven: When after the conversation? It is uncertain, your Honor.

The Court: The question calls for a yes or no answer. Objection overruled.

The Witness: It is no. [1130]

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The Court: After the conversation with Mr. Banning and Mr. Ball that you have just testified to, did you thereafter have any conversations with either of them concerning the same matter?

The Witness: No.

The Court: Did you thereafter receive any instructions or statements purporting to be from either Matson or the War Shipping Administration which was different from the statements made to you by Mr. Banning or Mr. Ball?

The Witness: No.

The Court: That testimony is clear to me [1132] now.

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(Testimony of James E. Sweeney.)

Q. (By Mr. Bunn): Mr. Sweeney, were you on the dock again at Pier A, Long Beach, after that conversation?

Mr. Diether: On or after what date? [1135]

The Court: Before we come to that, Mr. Sweeney, were you at the dock on an occasion with Mr. Londono when either he or you had some discussion with the people who were unloading the wire about taking good wire and bad wire?

Mr. Laven: I think your Honor's question was "unloading." It was already unloaded.

The Court: No, Londono testified he was down there with somebody, I have forgotten who else it was, and they went on board and tried to get the good wire placed over in one pile.

Were you there on any such occasion as that?

The Witness: I was with him.

The Court: Did you have the discussion with the people on board or on the dock?

The Witness: No, I had no discussion about separating the good from the bad.

The Court: For delivery to Gonzalez & Blanco or to the other pile?

The Witness: No discussion.

The Court: Did you see chalk marks on the dock at any time?

The Witness: Yes.

The Court: One for Dulien and another one for Gonzalez & Blanco?

The Witness: Yes. [1136]

The Court: When was that first time you saw it?

(Testimony of James E. Sweeney.)

The Witness: That would be about the 31st of July.

The Court: Did you ever have any discussion with anybody connected with the boat or the dock concerning the quality of wire being placed in the Gonzalez & Blanco chalk marks as distinguished from the quality of wire being placed in the Dulien chalk marks?

The Witness: No.

Q. (By Mr. Bunn): Did you after the conversation on the telephone with Mr. Ball observe the removal of any wire from the dock by Gonzalez & Blanco? A. Yes.

Q. Can you tell us whether or not the removal which you observed was from any particular pile of wire on the dock as distinguished from all other piles?

A. Well, at the time I observed it Londono was unable to take any deliveries so Gonzalez was able to take deliveries from any section.

Q. And was he? A. Yes.

Mr. John Morrow: I move to strike the witness' statement, that Londono was unable to do that, as a conclusion.

Mr. Diether: I object to that also.

Mr. Bunn: He has given the reason for the inability. [1137]

Mr. Diether: That is objected to as a conclusion.

The Court: I will receive it as his opinion only. Strictly it is a conclusion, but I will leave it in the evidence and weigh it accordingly. If we are going to



(Testimony of James E. Sweeney.)

back up every time and take 15 minutes on each question we will never get through.

Did Gonzalez & Blanco take wire when you saw them taking it for delivery on this occasion from various piles on the dock?

The Witness: Yes.

The Court: Did you observe the quality of the wire which they took?

The Witness: It was the best.

The Court: Did you observe it? Answer yes or no.

The Witness: Yes.

The Court: What was it?

The Witness: It was the best they could pick out.

Mr. Laven: I object to that as calling for a conclusion of the witness.

The Court: That may be stricken.

What do you mean by the best? Did they take any rusty wire?

The Witness: Yes.

The Court: He took some?

The Witness: Yes. [1138]

The Court: Did they take galvanized wire?

The Witness: Yes.

The Court: So your testimony is that they took what appeared to be the better wire?

The Witness: Yes.

The Court: Regardless of where it was located on the dock?

The Witness: Yes.

The Court: Now what date was that?

(Testimony of James E. Sweeney.)

The Witness: That would be after the day that I had the conversation with Mr. Banning and Mr. Ball.

The Court: Very well.

Q. (By Mr. Bunn): Did you make any observations of the condition of the wire on the dock at any time between July 31 and August 15th with regard to anything other than rust or absence of rust? A. Yes.

Q. What observations did you make?

A. Well, as the wire had been discharged and set aside there were plenty of rolls that had mud, and some obliterated even the appearance of wire, it was just a roll of mud, it appeared. Then others were not quite in as bad condition.

Q. In regard to mud?

A. That is right. And then there were various other stages of rust and corrosion. Some of it was damp and others [1139] had been lying where they could dry out a little bit.

The Court: Was some of it oiled?

The Witness: Yes, partially, maybe one half side oiled and one half side mud.

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